WEST END ANIMAL SERVICES AGENCY

Special Board Meeting

AUGUST 22, 2024 - 10:00 a.m.

Ontario City Hall
303 East B Street, Ontario, CA 91764

DIRECTOR PAUL S. LEON • DIRECTOR DEBRA PORADA • DIRECTOR CURTIS BURTON

SECRETARY CLAUDIA Y. ISBELL • TREASURER/CONTROLLER ARMEN HARKALYAN
INTERIM ADMINISTRATOR JORDAN VILLWOCK • BOARD ATTORNEY NICHOLAUS NORVELL

WELCOME TO A MEETING OF WEST END ANIMAL SERVICES AGENCY

All documents for public review are on file with the Records Management/City Clerk's Department located at 303 East B Street, Ontario, CA 91764.

Anyone wishing to speak in person during public comment or on a particular item will be required to fill out a blue slip. Blue slips must be turned in prior to public comment beginning or before an agenda item is taken up. The Secretary will not accept blue slips after that time. Comments will be limited to 3 minutes. Speakers will be alerted when they have 1 minute remaining and when their time is up. Speakers are then to return to their seats and no further comments will be permitted.

In accordance with State Law, remarks during public comment are to be limited to subjects within Board's jurisdiction. Remarks on other agenda items will be limited to those items. Remarks from those seated or standing in the back of the chamber will not be permitted. All those wishing to speak including Board and Staff need to be recognized by the Chair before speaking.

ACCOMMODATIONS

If you need special assistance or accommodations to participate in this meeting, please contact the Ontario City Clerk's office at 909-395-2009. Notification of 48 hours prior to the meeting will help the City make reasonable arrangements. Equipment for the hearing impaired is available in the Records Management Office.

ORDER OF BUSINESS

The regular West End Animal Services Agency meeting begins with Public Comment at 10:00 a.m. immediately followed by the Regular Meeting.

CALL TO ORDER *(OPEN SESSION)* 10:00 A.M.

ROLL CALL

Leon, Porada, Burton

PLEDGE OF ALLEGIANCE

Director Curtis Burton

SPECIAL CEREMONIES

Oath of Office - Board of Directors

PUBLIC COMMENTS 10:00 A.M.

The Public Comment portion of the Board meeting is limited to 30 minutes with each speaker given a maximum of 3 minutes. An opportunity for further Public Comment may be given at the end of the meeting. Under provisions of the Brown Act, Board is prohibited from taking action on non-agenda public comments.

As previously noted -- if you wish to address the Board, fill out one of the blue slips at the rear of the chambers and give it to the Secretary.

AGENDA REVIEW/ANNOUNCEMENTS

The Interim Administrator will go over all updated materials and correspondence received after the Agenda was distributed to ensure Board Members have received them. He will also make any necessary recommendations regarding Agenda modifications or announcements regarding Agenda items to be considered.

INFORMATION RELATIVE TO POSSIBLE CONFLICT OF INTEREST

Agenda item contractors, subcontractors and agents may require member abstentions due to conflict of interests and financial interests. Board Member abstentions shall be stated under this item for recordation on the appropriate item.

CONSENT CALENDAR

All matters listed under CONSENT CALENDAR will be enacted by one motion in the form listed below – there will be no separate discussion on these items prior to the time Board votes on them, unless a member of the Board requests a specific item be removed from the Consent Calendar for a separate vote.

Each member of the public wishing to address the Board on items listed on the Consent Calendar will be given a total of 2 minutes.

1. SELECTION OF CHAIR AND VICE-CHAIR

Select a Chair and Vice Chair to the West End Animal Services Agency Joint Powers of Authority Board of Directors.

2. CONTRACT WITH THE CITY OF ONTARIO FOR SERVICES

That the Board of Directors authorize the Interim Administrator to negotiate and execute a twenty-two-month Administrative Services Agreement with the City of Ontario for services in the amount not to exceed $220,000 substantially consistent in the agenda item attached hereto, with changes approved by the Interim Administrator and reviewed and approved as to form by General Counsel.

3. A RESOLUTION APPROVING THE WEST END ANIMAL SERVICES AGENCY ADMINISTRATIVE POLICIES & PROCEDURES

That the Board of Directors adopt a resolution approving the West End Animal Services Agency Administrative Polices and Procedures Manual, including Board Compensation, Agency Staff, Agency Operations, Claims for Damages Procedure, Real Property Procedures and inclusion of the City of Ontario's existing polices for Purchasing, Travel and Reimbursement, Personnel Rules and Regulations, Records Retention, Investment Policy, and California Environmental Quality Act Guidelines.

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE WEST END ANIMAL SERVICES AGENCY APPROVING ADMINISTRATIVE POLICIES AND PROCEDURES MANUAL

4. SOLE SOURCE CONTRACT WITH BEST, BEST & KRIEGER LLP FOR GENERAL COUNSEL

That the Board of Directors authorize the Interim Administrator to execute a one-year Legal Services Agreement with Best Best and Krieger LLP (BBK) of Riverside, California, for legal services in the amount not to exceed $180,000.

ADMINISTRATIVE REPORTS/DISCUSSION/ACTION

5. A RESOLUTION ESTABLISHING WEST END ANIMAL SERVICES AGENCY REGULAR BOARD OF DIRECTOR MEETING CADENCE AND DESIGNATING PRINCIPAL GOVERNANCE AND BUSINESS ADDRESS, HOLIDAYS, AND REGULAR MEETING SCHEDULE

That the Board of Directors adopt a meeting cadence for the West End Animal Services Agency (WEASA) and adopt a resolution establishing initial governance items and the regular meeting schedule.

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE WEST END ANIMAL SERVICES AGENCY DESIGNATING PRINCIPAL GOVERNANCE AND BUSINESS ADDRESS, HOLIDAYS, AND REGULAR MEETING SCHEDULE

6. A RESOLUTION APPOINTING THE INTERIM ADMINISTRATOR, TREASURER/CONTROLLER, AND SECRETARY

That the Board of Directors adopt a Resolution appointing agency officers.

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE WEST END ANIMAL SERVICES AGENCY APPOINTING AGENCY OFFICERS

7. A LEASE AGREEMENT FOR A TEMPORARY SHELTER FACILITY LOCATED AT 1630 SHEARWATER STREET, ONTARIO WITH THOMAS M. HENDRICKSON REVOCABLE TRUST

That the Board of Directors authorize the Interim Administrator to negotiate and execute a Lease Agreement between Thomas M. Hendrickson Revocable Trust and the West End Animal Services Agency for the use of the property located at 1630 Shearwater Street, Ontario, Ca., for a thirty-six-month term with the option to extend for up to two additional one-year terms in a form substantially consistent with the attached leased terms.

STAFF MATTERS

Interim Administrator Villwock

BOARD MATTERS

Director Leon
Director Porada
Director Burton

ADJOURNMENT

West End Animal Services Agency

SECTION:
CONSENT CALENDAR

August 22, 2024

Prepared By: Jordan Villwock, Interim Administrator
Reviewed By: Vanny Khu, Administrative Officer
Approved By: 

Submitted To: JPA Board
Approved: _____
Continued To: _____
Denied: _____
Item No: 01

SUBJECT: SELECTION OF CHAIR AND VICE CHAIR

RECOMMENDATION: That the Board of Directors select a Chair and Vice Chair to the West End Animal Services Agency Joint Powers of Authority Board.

FISCAL IMPACT: There is no fiscal impact associated with this item.

BACKGROUND & ANALYSIS: The Chair and Vice Chair positions are selected and voted on by the WEASA Board. The Chair and the Vice Chair shall coordinate with the Secretary to set meeting agendas and shall also have the duties set forth in any adopted Bylaws of the Agency.

The Chair, or in the Chair's absence the Vice Chair, shall preside at and conduct all meetings of the Board and execute agreements and other official on behalf of the Agency. In the absence or inability of the Chair to act, the Vice Chair shall act as Chair.

If either the Chair or Vice Chair ceases to be a Director, the resulting vacancy will be filled at the next meeting of the Board.

West End Animal Services Agency	**SECTION:** **CONSENT CALENDAR**
August 22, 2024	
Prepared By: Jordan Villwock, Interim Administrator	Submitted To: JPA Board
Reviewed By: Vanny Khu, Administrative Officer	Approved: _____
Approved by: 	Continued To: _____
	Denied:_____
	Item No: 02

SUBJECT: A CONTRACT BETWEEN THE WEST END ANIMAL SERVICES AGENCY AND THE CITY OF ONTARIO FOR SERVICES

RECOMMENDATION: That the Board of Directors authorize the Interim Administrator to negotiate and execute a twenty-two-month Administrative Services Agreement with the City of Ontario for services in the amount not to exceed $220,000 substantially consistent in the agenda item attached hereto, with changes approved by the interim administrator and reviewed and approved as form by General Counsel.

FISCAL IMPACT: The initial 10-months of services will be included in the West End Animal Services Agency Fiscal Year 2024-25 Annual Budget which will be considered at the September 2024 Regular Meeting of the Board of Directors.

BACKGROUND & ANALYSIS: The West End Animal Services Agency (WEASA) is a joint powers agency established under the Joint Exercise of Powers Agreement effective August 1, 2024. The creation of WEASA will offer local control, enhanced animal services, improved community relations, and allow sharing of resources and services between the member agencies.

The Joint Exercise Powers of Agreement for WEASA allows the Board of Directors to contract with a Member Agency to provide necessary administrative services as appropriate. All personnel employed by the individual Member Agencies shall remain employees of their respective Member Agency.

The City of Ontario is serving as Interim Administrator and providing leadership and administrative services to WEASA. Staff is recommending contracting with the City of Ontario for the following services:

- Staffing of the Officers through the Interim Administrator, Board Secretary, and Treasure/Controller positions
- Human Resources/Risk Management services
- Information Technology services and support
- Financial services
- Fleet services
- Facilities management services
- Project management services

The collective cost to WEASA for all the above services would be $10,000 per month. This comprehensive support will enhance operational efficiency and achieve cost savings for the benefit of residents within the jurisdiction.

West End
Animal Services Agency

JOINT POWER OF AUTHORITY

MEMBER AGENCIES ONTARIO AND CHINO

BOARD MEMBERS

PAUL S. LEON
ONTARIO
DIRECTOR

DEBRA PORADA
ONTARIO
DIRECTOR

CURTIS BURTON
CHINO
DIRECTOR

OFFICERS

CLAUDIA ISBELL
ONTARIO
SECRETARY

ARMEN HARKALYAN
ONTARIO
TREASURER/CONTROLLER

JORDAN VILLWOCK
ONTARIO
INTERIM ADMINISTRATOR

WEST END ANIMAL SERVICES AGENCY
ADMINISTRATIVE SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered into this ____ day of August**,** 2024, by and between the West End Animal Services Agency, a joint powers authority organized under the laws of the State of California with its principal place of business at 303 East “B” Street, Ontario, California 91764-4196, County of San Bernardino, State of California ("Agency") and the City of Ontario, a municipal organization under the laws of the State of California with its principal place of business at 303 East “B” Street, Ontario, California 91764-4196, County of San Bernardino, State of California (“City”). Agency and City are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 City.

City desires to perform and assume responsibility for the provision of certain administrative services required by the Agency on the terms and conditions set forth in this Agreement. City represents that it is experienced in providing administrative services and animal services project management and implementation services to public clients and has the necessary qualifications to provide such services.

2.2 Project.

Agency desires to engage City to render such administrative services for the implementation and transition of animal control and animal sheltering (“Animal Services”) from a non-profit, Inland Valley Humane Society (IVHS), which currently provides services on behalf of

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the Cities of Chino and Ontario, to the West End Animal Services Agency, a joint powers authority, as set forth in this Agreement ("Project").

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. City promises and agrees to furnish to the Agency all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the administrative services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The initial term of this Agreement shall be for twenty-two-months from **August __ , 2024** to **June 30, 2026**, unless earlier terminated as provided herein. City shall complete all Services within the term of this Agreement and shall meet any agreed upon schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

3.2 Compensation.

3.2.1 Compensation. City shall receive compensation for all Services rendered under this Agreement at the monthly fee of $10,000 for the initial term. All work performed inclusive of all costs and expenses shall not exceed $220,000 for the initial term unless agreed to in writing by the Parties.

3.2.2 Payment of Compensation. The City shall submit a monthly invoice to the Agency for services rendered in accordance with this Agreement. Agency shall, within 30 days of receiving such invoice, review the invoice and pay all non-disputed and approved charges. If the Agency disputes any of City's fees, the Agency shall give written notice to City within thirty (30) days of receipt of an invoice of any disputed fees set forth therein. Payment shall not constitute acceptance of any Services completed by City. The making of final payment shall not constitute a waiver of any claims by the Agency for any reason whatsoever.

3.2.3 No Reimbursement for Expenses. City shall not be reimbursed for any expenses unless agreed to in writing by the Parties.

3.3 Responsibilities of City.

3.3.1 Independent Contractor; Control and Payment of Subordinates. The Services shall be performed by City or under its supervision. City will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. Agency retains City on an independent contractor basis and not as an employee. Any personnel performing the Services on behalf of City shall not be employees of Agency and shall at all times be under City's exclusive direction and control. Neither Agency, or any of its officials, officers, directors, employees or agents shall have control over the conduct of City or any of City's officers, employees or agents, except as set forth in this Agreement. City shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. City shall be responsible for all reports and obligations

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respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.3.2 Schedule of Services. City shall perform the Services in a prompt and timely manner and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. City represents that it has the professional and technical personnel required to perform the Services expeditiously. Upon request of Agency, City shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.3.3 Substitution of Key Personnel. City has represented to Agency that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, City may substitute other personnel of at least equal competence upon written approval of Agency. In the event that Agency and City cannot agree as to the substitution of key personnel, Agency shall be entitled to terminate this Agreement for cause.

3.3.4 Agency's Representative. The Agency hereby designates **Jordan Villwock, Interim Administrator**, or the Executive Director of Animal Services, or his/her designee, to act as its representative in all matters pertaining to the administration and performance of this Agreement ("Agency Representative"). Agency Representative shall have the power to act on behalf of the Agency for review and approval of all services submitted by City but not the authority to enlarge the Scope of Services or change the total compensation due to City under this Agreement. The Executive Director or Interim Administrator shall be authorized to act on Agency's behalf and to execute all necessary documents which enlarge the Scope of Services or change the City's total compensation subject to the provisions contained in this Agreement. Any changes to the Scope of Services shall be made only by written agreement between City and Executive Director or Interim Administrator, Agency's Representative, their designee.

3.3.5 City's Representative. City hereby designates **Darlene Sanchez, Assistant City Manager,** or his/her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have full authority to represent and act on behalf of the City for all purposes under this Agreement. The City's Representative shall supervise and direct all Services, using his/her best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.3.6 Coordination of Services. City agrees to work closely with Agency staff in the performance of Services and shall be available to Agency staff at all reasonable times.

3.3.7 Standard of Care; Performance of Employees. City shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as used by professionals in the same discipline in the State of California. City represents and maintains that it is skilled in the professional calling necessary to perform the Services. City warrants that all of its employees shall have sufficient skill and experience to perform the Services assigned to them. City represents that it, its employees have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this

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Agreement. City shall perform, at its own cost and expense and without reimbursement from the Agency, any services necessary to correct errors or omissions which are caused by the City's failure to comply with the standard of care provided for herein. Any employee of the City who is determined by the Agency to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the Agency, shall be promptly removed from the Project by the City and shall not be re-employed to perform any of the Services or to work on the Project.

3.3.8 Period of Performance.

3.3.8.1 City shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). City shall also perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibits "A" or "B" attached hereto, or which may be separately agreed upon in writing by the Agency and City ("Performance Milestones"). City agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such Performance Milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the Agency will suffer damage.

3.3.8.2 Neither Agency nor City shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing Party. For purposes of this Agreement, such circumstances include a Force Majeure Event. A Force Majeure Event shall mean an event that materially affects a Party's performance and is one or more of the following: (1) Acts of God or other natural disasters; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the services); (4) strikes and other organized labor action occurring at the site and the effects thereof on the services, only to the extent such strikes and other organized labor action are beyond the control of City and its subcontractors, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (5) pandemics, epidemics or quarantine restrictions. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of a public agency applicable to the services and Agreement.

3.3.8.3 Should a Force Majeure Event occur, the non-performing Party shall, within a reasonable time of being prevented from performing, give written notice to the other Party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement. Force Majeure Events and/or delays, regardless of the Party responsible for the delay, shall not entitle City to any additional compensation. Notwithstanding the foregoing in this section, the Agency may still terminate this Agreement in accordance with the termination provisions of this Agreement.

3.3.9 Laws and Regulations; Employee/Labor Certification.

3.3.9.1 Compliance with Laws. City shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. City shall be liable for all violations of such laws and

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regulations in connection with the Services and this Agreement. All violations of such laws and regulations shall be grounds for the Agency to terminate the Agreement for cause.

3.3.9.2 Employment Eligibility; City. City certifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time and shall require all Consultants and sub-Consultants to comply with the same. City certifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement and shall not violate any such law at any time during the term of the Agreement.

3.3.9.3 Equal Opportunity Employment. City represents that it is an equal opportunity employer and it shall not discriminate against any Consultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. City shall also comply with all relevant provisions of Agency's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.3.9.4 Air Quality. To the extent applicable, City must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the South Coast Air Quality Management District (SCAQMD) and/or California Air Resources Board (CARB). City shall indemnify Agency against any fines or penalties imposed by SCAQMD, CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by City, or others for whom City is responsible under its indemnity obligations provided for in this Agreement.

3.3.9.5 Water Quality Management and Compliance. City shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the Agency's ordinances regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251, *et seq.*); the California Porter-Cologne Water Quality Control Act (Water Code § 13000 *et seq.*); and any and all regulations, policies, or permits issued pursuant to any such authority. City must additionally comply with the lawful requirements of the Agency, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges. Agency may seek damages from City for delay in completing the Services caused by City's failure to comply with the laws, regulations and policies described in this Section, or any other relevant water quality law, regulation, or policy.

3.3.9.6 Safety. City shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the City shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

3.3.10 Insurance.

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3.3.10.1 During the Term of this Agreement, City shall maintain insurance policies and/or self-insurance coverage in the manner and to the extent City insures and/or self-insures itself for similar risks with respect to its operations, equipment, and property. Such insurance policies and/or self-insurance coverage shall, at a minimum, meet the requirements of this section.

3.3.10.2 The manner in which any insurance and/or self-insurance under this section is provided and the extent of such insurance and/or self-insurance shall be set forth in a Certificate of Insurance and/or Certificate of Self-Insurance, delivered to the other Party and signed by an authorized representative of the City, which fully describes the insurance and/or self-insurance program and how the insurance/program covers the risks set forth in this section. Insurance provided by a joint powers agency insurance pool shall be considered self-insurance for the purposes of this section.

(a) Coverage under insurance and/or self-insurance required under this section shall provide coverage for the following:

(i) Commercial general liability insurance or equivalent risk management coverage covering bodily injury, property damage, personal/advertising injury, premises/operations liability, products/completed operations liability, and contractual liability, in an amount no less than $2,000,000 per occurrence / $4,000,000 aggregate. The policy shall give the Agency, its officials, officers, employees, agents and designated volunteers additional insured status. Any changes to the limits shall be based on prevailing insurance standards in the municipal and/or animal control and sheltering services industry applicable at the time, as well as review of any loss history associated with this Agreement.

(ii) Automobile liability insurance or equivalent risk management coverage in an amount no less than $1,000,000 per occurrence for bodily injury and property damage. Coverage shall include owned, non-owned and hired vehicles. The policy shall give the Agency, its officials, officers, employees, agents and designated volunteers additional insured status. Any changes to the limits shall be based on prevailing insurance standards in the municipal and/or animal control and sheltering services industry applicable at the time.

(iii) Workers' compensation insurance or equivalent risk management coverage as required by law. The City certifies that it is aware of the provisions of section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and the City will comply with such provisions before commencing work under this Agreement.

(b) In addition, City shall ensure that all contractors and subcontractors performing work on the Project or on behalf of the Agency maintain in full force and effect insurance policies consistent with the types and amounts of insurance required above, as well as other financial sureties. City shall ensure that contractors' and subcontractors' Commercial General Liability and Automobile Liability policies give the Agency and its officials, officers, employees, agents, and designated volunteers additional insured status, or endorsements providing the same coverage.

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3.4 Labor Code Requirements.

3.4.1 Prevailing Wages. City is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is $1,000 or more, City agrees to fully comply with such Prevailing Wage Laws. Agency shall provide City with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. City shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the City's principal place of business and at the project site. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within this Agreement, and City shall therefore comply with such Labor Code sections to the fullest extent required by law. City shall defend, indemnify and hold the Agency, its officials, officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.4.2 Registration/DIR Compliance. If the Services are being performed on a public works project of over $25,000 when the project is for construction, alteration, demolition, installation, or repair work, or a public works project of over $15,000 when the project is for maintenance work, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the City and all Consultants must be registered with the Department of Industrial Relations ("DIR"). City shall maintain registration for the duration of the Project and require the same of any Consultants.

3.4.3 Compliance Monitoring. This Project may also be subject to compliance monitoring and enforcement by the DIR. It shall be City's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR. Any stop orders issued by the DIR against City or any Consultant that affect City's performance of services, including any delay, shall be City's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered City caused delay and shall not be compensable by the Agency. City shall defend, indemnify and hold the Agency, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the DIR against City or any Consultant.

3.4.4 Labor Certification. By its signature hereunder, City certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5 Termination of Agreement.

3.5.1.1 Grounds for Termination. Agency may, by written notice to City, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to City of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, City shall be compensated only for those Services which have been adequately rendered to Agency, and City shall be entitled to

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no further compensation. City may not terminate this Agreement except by providing written notice to Agency at least thirty (30) days before the effective date of such termination provided that the Agency may waive this notice period. The rights and remedies of the Agency provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or under this Agreement.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, Agency may require City to provide all finished or unfinished Documents and Data and other information of any kind prepared by City in connection with the performance of Services under this Agreement. City shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, Agency may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.6 Indemnification.

3.6.1 The Agency shall defend, indemnify, and hold harmless City and its officials, officers, employees, contractors, agents, and authorized volunteers ("**City Parties**") from any and all claims, demands, damages, liabilities, fines, expenses, and related costs and fees, including attorney's fees (collectively, "**Claims**"), arising from or related to City's performance of services under this Agreement, except to the extent such Claims are caused by the negligence, recklessness, or willful misconduct of the City Parties or any material breach of this Agreement by City.

3.6.2 City shall defend, indemnify, and hold harmless Agency and its officials, officers, employees, contractors, agents, and authorized volunteers from any and all Claims (as defined above), to the extent the Claims are caused by the negligence, recklessness, or willful misconduct of any City Party or any material breach of this Agreement by City.

3.6.3 The Agency and City shall reasonably cooperate in all aspects involving any defense made pursuant to this section. A Party obligated to defend and indemnify the other Party under this section shall, to the extent required herein, pay and satisfy any judgment, award or decree that may be rendered against the other Party or its directors, officials, officers, consultants, employees, agents or volunteers, in any such suit, action or other legal proceeding. A Party obligated to defend and indemnify the other Party under this section shall, to the extent required herein, reimburse the other Party and its officials, officers, employees, contractors, agents, and authorized volunteers, for any and all legal expenses and costs, including reasonable attorneys' fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. A Party's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by such Party, its directors, officials, officers, consultants, employees, agents or volunteers. This section shall survive any expiration or termination of this Agreement.

3.7 General Provisions.

3.7.1 Accounting Records. City shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. City shall allow a representative of Agency during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created

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pursuant to this Agreement. City shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.7.2 Independent Contractors and Subcontracting.

3.7.2.1 Use of Contractors. City is aware of statutory and case law regarding classification of workers as independent contractors, including California Labor Code Section 2750.3 and Dynamex Operations West, Inc. v. Superior Court, 4 Cal. 5th 903 (2018). To ensure that City is in compliance with the California Labor Code, City shall only utilize its employees to provide the Services. City may not provide the Services through any independent contractor, subcontractor or Consultant ("Subcontractor(s)") unless approved by the Agency as set forth in Section 3.7.2.2 below. City represents and warrants that all personnel who perform the Services on City's behalf are City's employees, and that City complies with all applicable laws, rules and regulations governing its employees, including, but not limited to, the California Labor Code, Unemployment Insurance Code and all applicable Industrial Welfare Commission Wage Orders.

3.7.2.2 Prior Approval Required. City shall not use any Subcontractor to provide the Services, or any portion of the work required by this Agreement, without prior written approval of Agency. In the event that Agency authorizes City to use a Subcontractor, City shall enter into a written agreement with the Subcontractor, which must include all provisions of the Agreement, including a restriction on the Subcontractor's use of further independent contractors, subcontractors or Consultants without the Agency's prior written consent.

3.7.3 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

City: City of Ontario
303 East "B" Street
Ontario, CA 91764
ATTN: Darlene Sanchez, Assistant City Manager

Agency: West End Animal Services Agency
303 East "B" Street
Ontario, CA 91764
ATTN: Jordan Villwock, Interim Administrator

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.7.4 Ownership of Materials and Confidentiality.

3.7.4.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for Agency to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans,

b.

specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by City under this Agreement ("Documents & Data"). All Documents & Data shall be and remain the property of Agency, and shall not be used in whole or in substantial part by City on other projects without the Agency's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, City shall provide to Agency reproducible copies of all Documents & Data, in a form and amount required by Agency. Agency reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by Agency at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the City is entitled under the termination provisions of this Agreement, City shall provide all Documents & Data to Agency upon payment of the undisputed amount. City shall have no right to retain or fail to provide to Agency any such documents pending resolution of the dispute. In addition, City shall retain copies of all Documents & Data on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to Agency upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, City shall make a reasonable effort to notify Agency and provide Agency with the opportunity to obtain the documents.

3.7.4.2 Consultants. City shall require all Consultants to agree in writing that Agency is granted a non-exclusive and perpetual license for any Documents & Data the Consultant prepares under this Agreement. City represents and warrants that City has the legal right to license any and all Documents & Data. City makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than City or its Consultants, or those provided to City by the Agency.

3.7.4.3 Right to Use. Agency shall not be limited in any way in its use or reuse of the Documents and Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of City shall be at Agency's sole risk. If Agency uses or reuses the Documents & Data on any project other than this Project, it shall remove the City's seal from the Documents & Data and indemnify and hold harmless City and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Documents & Data on such other project. City shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the Agency upon completion, suspension, abandonment or termination. City shall not be responsible or liable for any revisions to the Documents & Data made by any party other than City, a party for whom the City is legally responsible or liable, or anyone approved by the City.

3.7.4.4 Indemnification. City shall defend, indemnify and hold the Agency, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by Agency of the Documents & Data, including any method, process, product, or concept specified or depicted.

3.7.4.5 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written

b.

information, and other Documents & Data either created by or provided to City in connection with the performance of this Agreement shall be held confidential by City. Such materials shall not, without the prior written consent of Agency, be used by City for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to City which is otherwise known to City or is generally known, or has become known, to the related industry shall be deemed confidential. City shall not use Agency's name or insignia, photographs of the Project, or any public Agency pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of Agency.

3.7.4.6 Confidential Information. The Agency shall refrain from releasing City's proprietary information ("Proprietary Information") unless the Agency's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the Agency shall notify City of its intention to release Proprietary Information. City shall have five (5) working days after receipt of the release notice to give Agency written notice of City's objection to the Agency's release of Proprietary Information. City shall indemnify, defend and hold harmless the Agency, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. Agency shall not release the Proprietary Information after receipt of an objection notice unless either: (1) City fails to fully indemnify, defend (with Agency's choice of legal counsel), and hold Agency harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that Agency release such information.

3.7.5 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.7.6 Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements.

3.7.7 Attorneys' Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and all costs of such action.

3.7.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, City must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the Agency. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by City. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, City shall be barred from bringing and maintaining a valid lawsuit against the Agency.

b.

3.7.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.7.10 Agency's Right to Employ Other Consultant. Agency reserves right to employ other consultant in connection with this Project.

3.7.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.7.12 Assignment or Transfer. City shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the Agency, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. City shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of Agency. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.7.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to City include all personnel, employees, agents, and Consultants of City, except as otherwise specified in this Agreement. All references to Agency include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.7.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.7.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.7.16 No Third-Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.7.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.7.18 Prohibited Interests. City maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for City, to solicit or secure this Agreement. City warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for City, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. City further agrees to file, or shall cause its employees or Consultants to file, a Statement of Economic Interest with the Agency's Filing Officer as required

b.

under state law in the performance of the Services. For breach or violation of this warranty, Agency shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of Agency, during the term of his or her service with Agency, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.7.19 Authority to Enter Agreement. City has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.7.20 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.7.21 Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification obligations, shall survive any such expiration or termination.

[SIGNATURES ON NEXT PAGE]

b.

SIGNATURE PAGE TO ADMINISTRATIVE SERVICES AGREEMENT BETWEEN THE WEST END ANIMAL SERVICES AGENCY AND CITY OF ONTARIO

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed on the day and year first above written.

West End Animal Services Agency	**City of Ontario**
Approved By:	
	By: _____
_____	Its: _____
Jordan Villwock Interim Administrator	Printed Name: _____
Approved as to Form:	
	By: _____
_____	Its: _____
Best Best & Krieger LLP Agency Attorney	Printed Name: _____
Attested By:	
_____	
Secretary	

b.

EXHIBIT "A"
SCOPE OF SERVICES

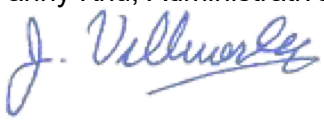
The respective Agency Councils for the Cities of Ontario and Chino have established a Joint Powers Authority, West End Animal Services Agency to provide Animal Services to our communities and has appointed the City of Ontario as Interim Administrator. Additionally, the West End Animal Services Agency desires to contract with the City of Ontario provide necessary administrative services on their behalf. The scope of services in general will include the following:

1. Provide and Interim Administrator, Board Secretary, and Treasure/Controller as Officers to the JPA Board.
2. Provide Human Resources/Risk Management services including assisting with salary surveys, recruitment, benefits administration, employee performance and investigation services, and other HR/Risk Management services.
3. Provide Information Technology services and support.
4. Provide Financial services including budgeting, accounting, accounts payable, purchasing and procurement, and other financial services.
5. Provide Fleet and Facilities Management services.
6. Provide Project Management services.

c.

EXHIBIT "B"
SCHEDULE OF SERVICES

The contract is a twenty-two-month agreement spanning from August ___, 2024 through June 30, 2026, with the Agency having the option to renew this agreement automatically for no more than two (2) additional one-year terms. Extension years will be negotiated at a later date if necessary.

West End Animal Services Agency	**SECTION:** **CONSENT CALENDAR**
August 22, 2024	
Prepared By: David Sweeney, Administrative Intern	Submitted To: JPA Board
Reviewed By: Vanny Khu, Administrative Officer	Approved: _____
Approved By: 	Continued To: _____
	Denied: _____
	Item No: 03

SUBJECT: A RESOLUTION APPROVING THE ADOPTION OF THE WEST END ANIMAL SERVICES AGENCY ADMINISTRATIVE POLICIES AND PROCEDURES

RECOMMENDATION: That the Board of Directors adopt a resolution approving the West End Animal Services Agency Administrative Polices and Procedures Manual, including Board Compensation, Agency Staff, Agency Operations, Claims for Damages Procedure, Real Property Procedures and inclusion of the City of Ontario's existing polices for Purchasing, Travel and Reimbursement, Personnel Rules and Regulations, Records Retention, Investment Policy, and California Environmental Quality Act Guidelines.

FISCAL IMPACT: There is no direct fiscal impact with this action.

BACKGROUND & ANALYSIS: To facilitate day-to-day services and business, Staff proposes adopting the West End Animal Services Agency Administrative Policies and Procedures Manual which includes existing policies for purchasing, travel and reimbursement, personnel rules and regulations, records retention, and investment. The City of Ontario's policies are detailed in Exhibits A - E. Utilizing these established policies will streamline the integration process and provide a solid foundation for the WEASA's operations from the onset.

WEASA may develop and adopt its own policies in the future, tailored to its specific needs and circumstances. For now, using some of the proven and effective policies of the City of Ontario will ensure continuity and stability as the Agency begins its operations.

RESOLUTION NO. _____

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE WEST END ANIMAL SERVICES AGENCY APPROVING THE ADMINISTRATIVE POLICIES AND PROCEDURES MANUAL

WHEREAS, the West End Animal Services Agency ("Agency") is a joint powers agency established pursuant to the Joint Exercise of Powers Act (Gov. Code § 6500 *et seq.*) and a Joint Exercise of Powers Agreement effective August 1, 2024; and

WHEREAS, pursuant to the Joint Exercise of Powers Agreement and applicable law, the Board is authorized to adopt any regulations, policies, or procedures for the operation of the Agency not inconsistent with State constitutional, statutory, or decisional case law, the California Code of Regulations, or the Joint Exercise of Powers Agreement;

WHEREAS, the Board desires to adopt the attached Administrative Policies and Procedures Manual to establish policies and procedures for the operation of the Agency.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of the West End Animal Services Agency:

1. That the above recitals are true and correct.

2. That the Board hereby adopts the Administrative Policies and Procedures Manual to read as set forth in Exhibit A, attached hereto and incorporated herein.

3. That if any provision of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Resolution which can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Board of Directors hereby declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion thereof.

4. That this Resolution shall take effect immediately.

The Secretary of the West End Animal Services Agency shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 22nd day of August, 2024.

_____

_____, CHAIR

ATTEST:

_____
CLAUDIA Y. ISBELL SECRETARY

APPROVED AS TO FORM:

_____
NICHOLAUS NORVELL
GENERAL COUNSEL

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, _____, Secretary of the West End Animal Services Agency, DO HEREBY CERTIFY that foregoing Resolution No. 2024-__ was duly passed and adopted by the Board of Directors of the West End Animal Services Agency at its special meeting held August 22, 2024 by the following roll call vote, to wit:

AYES: CHAIR/DIRECTORS:

NOES: DIRECTORS:

ABSENT: DIRECTORS:

_____
CLAUDIA Y. ISBELL, SECRETARY

(SEAL)

The foregoing is the original of Resolution No. 20__-__ duly passed and adopted by the Board of Directors of the West End Animal Services Agency at its special meeting held August 22, 2024.

_____
CLAUDIA Y. ISBELL, SECRETARY

(SEAL)

WEST END ANIMAL SERVICES AGENCY

ADMINISTRATIVE POLICIES & PROCEDURES MANUAL

ARTICLE 1 — GENERAL PROVISIONS

Section 1.1 Purpose. The purpose of this Administrative Code ("**Manual**") is to provide a statement which contains the organizational structure of the West End Animal Services Agency ("**Agency**"), the duties and powers of the Board of Directors ("**Board**") and its committees, the duties and powers of the administrative staff and employees, and the major policies and procedures by which the functions of the Agency are carried out. Other procedures may be set forth in specific resolutions or motions of the Board.

Section 1.2 Severability. It is hereby declared to be the intention of the Board that the sections, paragraphs, sentences, clauses, and phrases of this Manual are severable; and if any phrase, clause, sentence, paragraph, or section of this Manual shall be declared unconstitutional or otherwise invalid by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any remaining phrases, clauses, sentences, paragraphs, and section of this Manual.

Section 1.3 Amendments and Changes. This Manual and any of its provisions may be amended, supplemented to, or repealed from time to time. Such amendment, supplement, or repeal shall be accomplished only by adoption of an ordinance or resolution of the Board at a duly constituted meeting. The ordinance or resolution will provide for the insertion into the Manual and the removal, as required, from the Manual of applicable sections. Upon adoption, the revised or new sections shall be inserted in this Manual and those for which they are substituted shall be removed. Changes or additions shall be effective from the date of adoption or from such other date as may be provided by the Board.

Adopted by Resolution No. _____, dated _____.

ARTICLE 2 — [RESERVED]

Section 2.1 [Reserved]

ARTICLE 3 — TRAVEL & REIMBURSEMENT; BOARD COMPENSATION

Section 3.1 Reimbursement Policy.

Section 3.1.1 Reimbursement of Expenses. Members of the Board of Directors and Agency staff members are eligible for travel and expense reimbursement in the same manner, and to the same extent, as provided under City of Ontario Policy FSA-001, Travel and Expense Reimbursement Policy.

For purposes of this section, any reference to the City shall be deemed a reference to the Agency, any reference to the City Council will be deemed a reference to the Agency's Board of Directors, any reference to the City Manager will be deemed a reference to the Executive Director of Animal Control, and any reference to the Executive Director of Finance or designee will be a reference to the Agency's Treasurer or designee. Without limiting the generality of the foregoing provisions, the below-referenced events and activities shall be deemed by the Board to constitute the performance of official duties for purposes of reimbursement for travel, meals, registration fees, lodging, and incidental expenses:

i. Attendance and participation in regional, state, and national organizations whose activities affect the Agency's interests, including but not limited to conferences and educational workshops;

ii. Communicating with representatives of regional, state, and national government on Agency policy positions;

iii. Attendance and participation in conferences, workshops, training, and educational seminars to improve skills and information levels relevant to the Director's service to the Agency; and

iv. Attendance at events that recognize service to the Agency by others.

Section 3.1.2 Violations. Misuse of public resources or falsifying expense reports in violation of this Article may result in any or all of the following, without limitation: (1) loss of reimbursement privileges; (2) restitution to the Agency; (3) civil penalties for misuse of public resources; and (4) prosecution for misuse of public resources.

Section 3.2 Director Compensation. For a Director to be paid a lawfully-established per diem, for an authorized meeting, conference, or activity, or for reasonable and necessary travel to and from an authorized meeting, conference, or activity, it must be: (1) a "meeting" as defined in subdivision (a) of Government Code section 54952.2 of the Brown Act; (2) committee meetings of the Agency; (3) a conference or organized educational activity conducted in compliance with subdivision (c) of Section 54952.2 of the Government Code; or (4) other meetings or activities specifically listed in this Section, which shall in include the following:

(a) Each day's attendance at regular, special, and adjourned meetings of the Board; and

(b) Each day's attendance at regular, standing, or ad hoc committee meetings; and

(c) Each day's attendance at an individual briefing of the Director by the Agency's executive staff; and

(d) Each day's attendance at authorized meetings, conferences, or activities listed in the "Authorized Meetings, Conferences, and Activities" that are open to the public, at which topics of general interest to the public or to public agencies are discussed and which are hereby deemed as functions attended in an official capacity as a member of the Board.

The Board may authorize the payment to a Director for acting under the order of the Board for any additional meetings. Any Director attending an activity not listed below must receive the Board Chair's prior approval if compensation will be requested.

Compensation for each Director shall be $150 for attending meetings or occurrences authorized above.

Director compensation is limited to no more than three (3) days in any calendar month. Directors will be reimbursed for actual and necessary expenses when acting under orders of the Board.

Adopted by Resolution No. _____, dated _____.

ARTICLE 4 — AGENCY STAFF

Section 4.1 Executive Director of Animal Services. The Executive Director of Animal Services ("**Executive Director**") will carry out the decisions of the Board, be responsible for the day-to-day management and administration of the Agency, and act as the signatory for the Agency on all actions requiring approval of the Board unless otherwise required by law. The Executive Director shall be responsible for the proper and efficient day-to-day operation of the Agency as is or hereafter may be placed in his or her charge, or under his or her jurisdiction or control, pursuant to the provisions of the Agency's Joint Powers Agreement, or of any ordinance, resolution, bylaw or minute order of the Board.

Section 4.2 Interim Administrator. Until an Executive Director has been confirmed by the Board under the Agency's Joint Powers Agreement, the City of Ontario will serve as Interim Administrator of the Agency, and the City of Ontario City Manager will designate a senior management employee of the City to temporarily perform the powers and duties of the Executive Director.

Adopted by Resolution No. _____, dated _____.

ARTICLE 5 —PERSONNEL

Section 5.1 Personnel Policies. The Agency's Personnel Policies will follow the policies of the City of Ontario, as described in the City of Ontario's Personnel Rules and Regulations, as may be amended from time to time. The Agency's Executive Director shall have the same powers and authorities as the City Manager under the City's Personnel Rules and Regulations.

Adopted by Resolution No. _____, dated _____.

ARTICLE 6 — OFFICE OPERATIONS AND PROCEDURES.

Section 6.1 Agency Office. The principal office of the Agency shall be at 303 E B St, Ontario, California. The office shall be open from 7:30 am to 5:30 p.m. Monday through Thursday and 8:00 a.m. to 5:00 p.m. on Fridays. The Agency is closed on holidays observed by the Agency.

Section 6.2 Holidays. Holidays observed by the Agency are the following:

New Year's Day	January 1
Martin Luther King Jr. Day	3rd Monday in January
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1st Monday in September
Veterans' Day	November 11
Thanksgiving	4th Thursday in November
Christmas Eve	December 24
Christmas Day	December 25
New Year's Eve	December 31

Agency holidays that fall on a Saturday shall be observed on the preceding Friday. When an Agency holiday falls on a Sunday, the following Monday shall be observed.

Adopted by Resolution No. _____, dated _____.

ARTICLE 7 — RETENTION OF AGENCY RECORDS

Section 7.1 Background. Government Code Section 34090 *et seq.* provides that a local agency subject to the laws applicable to general law cities may destroy or dispose of records not expressly required by law to be preserved through specified procedures. Such procedures include the adoption of a resolution and the written consent of the agency's legal counsel.

Section 7.2 Schedule. Agency records shall be retained in accordance with the City of Ontario's Records Management Procedures Manual, as may be amended from time to time.

Section 7.3 Policy. The Agency shall comply with the City of Ontario's Records Management Procedures Manual, as may be amended from time to time, as the standard protocol for destruction or disposition of records.

Adopted by Resolution No. _____, dated _____.

ARTICLE 8 — FINANCIAL POLICIES

Section 8.1 General Funds. The General Fund of the Agency shall consist of a general checking account, a bond principal and interest fund savings account, a petty cash and change fund, a legal account with State of California Local Agency Investment Fund and investments as may be authorized by the Board. All accounts are managed by the Finance Department of the City of Ontario.

Section 8.2 General Savings Account. A general interest bearing savings (commercial) account shall be maintained at a local bank. All moneys received from revenues and services shall be deposited in this account. Funds shall be transferred from this account to special accounts as needed.

Section 8.3 General Checking Account. A general checking account shall be maintained at a local bank. Procedures for the approval of warrants and issuance and signature of checks shall be in accordance with the City of Ontario's Ordinance No. 2311. For purposes of this section, the Agency's Executive Director shall be the equivalent of the City Manager and the Agency Treasurer shall be the equivalent of the City's Executive Director of Finance.

Section 8.4 Investment Policy. The Agency's cash management process will operate pursuant to the City of Ontario's Investment Policy as adopted in Resolution No. 2023-159, as may be amended or replaced from time to time.

Section 8.5 [Reserved for Reserve Policy.]

Section 8.6 [Reserved for Debt Management Policy.]

Adopted by Resolution No. _____, dated _____.

ARTICLE 9 — PURCHASING AND CONTRACT PROCEDURE

Section 9.1 General Purchasing and Contract Procedure. All Agency purchasing and contracts shall be governed in accordance with the purchasing and contract procedure of the City of Ontario as described in Chapter 6: Purchasing of the Ontario Municipal Code and the City's Purchasing Policies and Procedures Manual, as may be amended from time to time. The Agency's Executive Director shall have the same powers and authorities as the City Manager under the City's Purchasing Policy and may delegate authority to the same extent as the City Manager.

Section 9.2 Emergency Purchasing and Contract Procedures. In the event of an emergency, the Agency may let contracts without a notice inviting bids pursuant to the procedures set forth in Public Contract Code section 22050 *et seq.* The Board hereby delegates to the Executive Director the authority to take any action set forth in Public Contract Code section 22050(a)(1) without a notice inviting bids. The Executive Director shall report any such award to the Board and take such further actions as specified in Public Contract Code section 22050 *et seq.*

Adopted by Resolution No. _____, dated _____.

ARTICLE 10 — ENVIRONMENTAL REVIEW/CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 10.1 CEQA Guidelines. Agency compliance with the California Environmental Quality Act will be governed by the Act and the City of Ontario guidelines for the implementation of CEQA as described in City of Ontario Resolution R2024-035 Amending and Adopting Local Guidelines for Implementing CEQA. The City of Ontario guidelines are adopted herein by this reference.

Adopted by Resolution No. _____, dated _____.

ARTICLE 11 — CLAIMS FOR DAMAGES

Section 11.1 Claims for Damages. Pursuant to authority in Section 935 of the Government Code, all claims against the Agency for money or damages, including claims excepted by Section 905 from Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of the Government Code, and which are not governed by another State law shall be presented within the time and in the manner prescribed herein.

Claims for damages filed against the Agency shall be processed and resolved in accordance with the policy of the City of Ontario described in the City of Ontario Municipal Code Title 3. Finance; Chapter 2: Claims and Demands.

Adopted by Resolution No. _____, dated _____.

ARTICLE 12 — REAL PROPERTY PROCEDURES

Section 12.1 Acceptance of Easements. The Executive Director of the Agency is authorized to accept on behalf of the Agency any deed or grant conveying any interest in or easement upon real property to the Agency for public purposes, and he or she is authorized to consent to the recordation of any such deed or grant. (Government Code Section 27281.)

Adopted by Resolution No. _____, dated _____.

CITY OF ONTARIO
ADMINISTRATIVE POLICY

SUBJECT	Number: FSA-002
PURCHASING POLICIES AND PROCEDURES MANUAL	**Effective Date:** July 1, 2024
	Revision Date: June 17, 2024
	Policy Owner(s): Financial Services Agency

PURPOSE

The primary goals and objectives of this Purchasing Policies and Procedures Manual ("Manual") are:

a. To facilitate best-value purchasing transactions.

b. To help employees of the City of Ontario ("City") facilitate the timely procurement of goods and services ("Purchasing System") needed to meet the City's operational needs while adhering to the regulations set forth in the City's Municipal Code (Volume 1, Title 2, Chapter 6), Generally Accepted Accounting Practices ("GAAP"), and all applicable Federal and State of California regulations and requirements.

c. To complement and reinforce fiscal control measures.

d. To communicate Citywide and promote a common understanding of the City's procurement policies and established business practices;

e. To define procurement roles and responsibilities of the Purchasing Division and staff, and serve as a tool for employee training and development.

The policy statements contained in this Manual represent the foundation upon which the City operates in its Purchasing System. This Manual will be revised and supplemented, as required, to meet City requirements.

SCOPE

The Purchasing Division, part of the Financial Services Department, is focused on strengthening the economic well-being and quality of life of the City's community through oversight of the timely procurement of City services and infrastructure. It defines success as providing superior service to all City Departments and thereby to the community, and it strives to maintain:

a. A strong commitment and genuine desire to provide supportive customer service in the spirit of teamwork, to take the extra step to be helpful, and to obtain the best quality of life for our community as the highest priority.

b. An attitude that fosters cooperation, creativity, and innovation in problem-solving while aiming to make the most economically prudent use of the City's limited resources.

c. The highest level of integrity and ethical standards while discharging its duties in accordance with the City's policies and procedures, and all applicable laws and regulations.

DEFINITIONS

a. **Annual Purchase Order:** A purchasing method used to purchase designated goods and/or services on a repetitive basis for the City's Agencies or Departments. Annual Purchase Orders shall be issued to a specific supplier on a per fiscal year basis and shall close at the end of the fiscal year.

b. **Best Value:** A value determined by evaluation of objective criteria that may include, but not be limited to price, features, functions life-cycle costs, technical experience, and past performance. A best value determination may involve the lowest cost proposal meeting the interests of the City and the needs of the project, or a tradeoff between price and other specified factors.

c. **City:** Refers to any entity affiliated with the City, including the Ontario Housing Authority (to the extent such entity adopts a resolution subjecting itself to the Uniform Public Construction Cost Accounting Act, and these purchasing policies and procedures).

d. **Cooperative Purchasing:** A competitive procurement method whereby the procurement requirements of two or more governmental entities are combined to obtain the benefits of volume pricing, reduction in administrative costs, or both.

e. **Emergency:** A sudden unexpected occurrence that poses a clear and imminent danger requiring immediate action to prevent or mitigate the loss or impairment of life, health property, or essential public services.

f. **Formal Bid:** A bid (subject to Section 2-6.07 of the Municipal Code) advertised in a local newspaper; submitted in a sealed envelope and in conformance with a prescribed format; and publicly opened at a specified place, date, and time.

g. **Goods:** Supplies, materials, equipment, and other commodities (other than services and real property) included in California Commercial Code Section 2105.

h. **Non-competitive:** A non-competitive procurement whereby an acceptable justification exists to support goods, services, or public works related purchases provided by a particular supplier without a competitive process.

i. **Prevailing Wage:** California Labor Code Sections 1720 *et seq.* and 1770 *et seq.*, as well as California Code of Regulations Title 8, Section 16000, *et seq.* ("Prevailing Wage Laws) require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the work is being performed as part of an applicable "public works" or "maintenance" project as defined by the Prevailing Wage Laws and if the total compensation is $1,000 or more, the City must make suppliers aware of these requirements and suppliers must fully comply with such Prevailing Wage Laws. For more information and threshold levels, visit the Department of Industrial Relations website at dir.ca.gov.

j. **Procurement:** The purchasing, leasing, or otherwise acquiring of any goods, services, or public project construction (including all of the functions that pertain to the acquisition).

k. **Professional Services:** Advisory, consulting, architectural, engineering, computer, legal, financial, telecommunications, financial, surveying or any service which involves the exercise of professional discretion or independent judgment (based on an advanced or specialized knowledge, expertise, or training gained by formal studies or experience).

l. **Purchase Order:** The written document provided to the supplier formalizing the terms and conditions associated with the ordering of the goods, services, or public project required by the City. It is the payment document and also serves as a low value threshold contractual document.

m. **Purchasing Officer:** The position defined by the City's organizational structure that is responsible for overseeing the Purchasing Division. The person occupying such a position may delegate to such other person or entity as he/she deems advisable such duties and responsibilities as have been provided. In the absence of the Purchasing Officer, or designee, the Assistant Finance Director or the Executive Director of Financial Services has the authority to sign purchase orders.

n. **Requisition:** A written request submitted to the Purchasing Division by a City Agency or Department to initiate the procurement process for specified goods, services, or a public project.

o. **Responsive Bid:** A bid which meets all of the specifications set forth in the request for bid proposal.

p. **Responsible Bidder:** A bidder who has demonstrated the attribute of trustworthiness as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract.

q. **Services:** The furnishing of labor, time, or effort by a contractor or supplier (which may involve to a lesser degree the delivery or supply of products). The term does not include services rendered by City officers and employees, nor private firms offering professional services.

r. **Sole Source:** A non-competitive procurement whereby an acceptable justification exists to support goods, services, or public works related purchases provided by a single source supplier. A sole source is, by definition, only available from one source.

s. **Standardized suppliers:** A non-competitive procurement whereby pre-authorized suppliers, approved by City Council, are selected for procuring products or services determined to be in the City's best interest to buy directly from specified suppliers.

t. **Virgin Materials:** Items that in their raw or unprocessed form tend to use more energy during processing phase. Therefore, recycled materials are preferred.

POLICY

1.0 PROCUREMENT OVERVIEW

1.1 Policy Statement

a. The City's goal for every purchasing transaction is to obtain the best value possible. Best value is determined by evaluating many factors (such as price, delivery capabilities, quality, past performance, training, financial stability, service capabilities, ease of ordering, payment terms, functions, features, life-cycle costs, etc.) and selecting a supplier that offers the best combination of those factors.

1.2 Policy Amplification

a. The Financial Services Department of the Financial Services Agency supports sustaining and promoting a procurement environment to best support the operational needs of the City's Agencies and Departments. These purchasing policies and procedures are meant to foster an environment that puts its City's Agencies and/or Departments in the best possible position to procure the products and services needed in a timely and cost-effective manner to effectively operate (while also making sure appropriate procurement processes are followed).

b. It is the responsibility of all employees involved in the procurement process to exercise due diligence in an effort to mitigate any avoidable risks, obtain maximum value for each dollar expended, and protect the City's rights in carrying out procurement transactions and in administering contracts.

2.0 PROCUREMENT CODE OF ETHICS

2.1 Policy Statement

a. The City desires to maintain a reputation that embodies the very highest standards of ethical conduct, and advocate a code of conduct that prohibits breach of public trust by any attempt to realize personal gain by a public employee through conduct inconsistent with the proper discharge of the employee's duties.

b. Employees are expected to demonstrate loyalty to the City by diligently following lawful instructions, using reasonable care, and using only the authority granted. City employees shall know and obey the letter and spirit of laws governing the purchasing function, and remain alert to the legal ramifications of purchasing decisions.

c. It is the responsibility of all City employees to endeavor to maintain the good name of the City, to develop and maintain good relations between the City and its suppliers, and to keep in mind that personal contacts form much of the basis for public opinion.

City employees must place the interests of the City first in all transactions (and expose questionable practices wherever discovered).

2.2 Supplier Relations

a. Negotiations with suppliers should be based on sound business judgment. The City expects its employees to be fair and neither perform nor accept favors. It is prohibited for City employees to accept personal advantages. Entertainment, gifts, free services, discounts on personal purchases (whether for the City employee or anyone else in his/her family or household) is forbidden. Favors must be declined and gifts must be returned pleasantly, diplomatically, and firmly. Relations with suppliers should be friendly, objective, and strictly for business.

2.3 Conflicts of Interest

a. The City expects its employees will not permit any conflict of interest between their personal affairs and City business. One may not have a financial interest, position, or relationship with any person, firm, or corporation that does business with the City that would influence (or could be regarded as influencing) their actions for the City. Family or relative financial interests can become a conflict for the employee. Any situation which is unclear should be reviewed with management.

2.4 Confidential Information

a. Suppliers may divulge to a City employee or employees confidential or proprietary information. Employees must handle confidential or proprietary information belonging to the City or suppliers with due care and diligence, and with proper consideration of ethical and legal ramifications and governmental regulations. City employees are expected to refer requests from the public for supplier or bidder information to the Records Management Department.

3.0 PROCUREMENT OF GOODS AND SERVICES

3.1 Policy Statement

a. The City strives to make fiscally responsible purchases of goods and services that reduce resource consumption and waste, perform as required, and promote human health and well-being.

3.2 Policy Amplification

a. All procurement of goods and services shall be made in accordance with City Council approved policies and procedures (including without limitation the City's Municipal Code). The City utilizes a combination of formal bids, informal bids, and alternative bid procedures for the procurement of goods, professional services, and public projects

based on need and threshold.

3.3 Formal Bid Procedures

a. Formal bid procedures are used for public projects exceeding two hundred thousand dollars ($200,000) or large dollar value procurements requiring a more formal procurement process. Types of procurement vehicles include:

    i. Notice Inviting Bids
    ii. Request for Qualifications

3.4 Informal Bid Procedures

a. Informal bid procedures are used for small to medium-sized public projects as defined in Municipal Code Section 2-6.13, and procurements for goods, services, and professional services with a defined list of attributes. Types of procurement vehicles include:

    i. Invitation for Bids

3.5 Alternative Bid Procedures

a. Alternative bid procedures are used when formal or informal bidding procedures are not required for goods, services, or professional services due to low dollar value; or when the procurement is for an intended outcome versus a defined list of attributes, etc. Types of procurement vehicles include:

    i. Informal Quotation
    ii. Request for Quote
    iii. Request for Proposal

3.6 Design Build

a. The City may utilize a design-build method of procurement for public projects in accordance with California Public Contracting Code Section 22160 *et seq*.

3.7 Local Preference

a. The City has established a local preference in order to promote the community's economic health and to encourage local participation in the procurement process in accordance with Municipal Code Section 2-6.22 (Local Preference). For the purchase of goods (except for materials for public works projects) the City may grant to suppliers located within the City limits a 2% advantage in the City's determination of low bid due to the ultimate receipt by the City and County of a proportionate amount of the sales tax associated with the purchase of the goods solicited. A supplier whose sales tax is

reportable outside of the City (but within the County of San Bernardino) will receive a 1 percent advantage in low bid determination. This section shall not apply to procurements subject to Federal funding requirements.

3.8 Standardization

a. Every effort shall be made to standardize commonly used items, vehicles, equipment, and services. Once a standard item has been determined, approval shall be obtained from City Council for repeated purchases expected to exceed $150,000 within a period of up to five (5) years. This will eliminate repetitive approvals by City Council for the same item.

3.9 Cooperative Purchases

a. The City may engage in cooperative purchasing for goods or services as a third-party agency "piggybacking" on another agency's competitively bid agreement so long as the goods or services were procured in accordance with minimum requirements of the Purchasing System. Cooperative purchasing reduces administrative expenses and secure prices and other benefits of a large volume purchase. Caution must be exercised to ensure that the City complies with all applicable Federal, state, and local laws as well as the City's Purchasing System. The Purchasing Division must be consulted prior to any City Agency or Department engaging in cooperative purchasing.

The City's Municipal Code Section 2-6.23 allows for the following exceptions to the procurement methods set forth in the City's Purchasing System:

I. Emergency – When in an emergency as defined in the Purchasing System, provided the procedures set forth in Section 2-6.24 of City's Municipal Code are followed.

II. Sole-Source—When a City Agency or Department determines that the goods, services, or public project can only be obtained from a sole source, the Agency or Department will submit a request for non-competitive procurement to the Purchasing Division. A sole source justification shall be valid for up to one year from the date of approval by the Purchasing Division.

III. Cooperative Purchasing – When the City Council has by resolution transferred the authority to make the purchase of goods to another governmental agency through cooperative purchasing and the agency generally follows the provisions of California Government Code Sections 54201 through 54204.

4.0 PUBLIC PROJECTS

4.1 Policy Statement

a. The City is subject to the California Uniform Public Construction Cost Accounting Act ("Act") in awarding all public projects for construction work.

4.0 Policy Amplification

a. The Act permits the City to:

   i. Simplify the bidding process for public projects valued up to $200,000; and
   ii. Minimize limits on using City employees for public works.

b. Every five years, the California Uniform Construction Cost Accounting Commission reviews the bid limits for inflation and other factors to determine whether adjustments should be made to the Act. If an adjustment is made to the current thresholds represented in this Manual, the State Controller will notify the affected public agencies. The adjustment may become effective before it appears as a formal change in the Public Contract Code ("PCC").

c. Public projects (as defined by the Act) may be let to contract as set forth in the Purchasing System and PCC sections 22000 through 22045 in accordance with the current dollar limits as follows:

   i. Public projects of $60,000 or less may be performed by the employees of the City by force account, negotiated contract, or purchase order;

   ii. Public projects of $200,000 or less may be let to contract by informal bid procedures as set forth in the Purchasing System and Act; and

   iii. Public projects of more than $200,000 shall, except as otherwise provided in the Act, be let to contract by formal bid procedure as set forth in the Purchasing System.

5.0 FEDERAL FUNDING REQUIREMENTS

5.1 Policy Statement

a. Federal procurement standards are set forth in Title 2 of the Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards ("Uniform Guidance"). The Uniform Guidance requires the City to have and use documented procurement procedures consistent with state, local, and tribal laws; and regulations and the standards of the procurement standards identified in Sections 200.317 through 200.327 of the Uniform Guidance when using certain Federal funds. This includes procurements made (i) in preparation of, during, and after an emergency declared by the President of the United States and that may be subject to Federal funding or reimbursement; and (ii) when using Federal grant funds subject to the Uniform Guidance. When procurement is subject to the Uniform Guidance, the City shall follow its document procurement procedures along with the procurement standards of the Uniform Guidance.

6.0 AGREEMENTS AND/OR CONTRACT STANDARDS

6.0 Policy Statement

a. The City's policy is the City Council has sole authority to approve agreements or contracts exceeding $150,000; and the City Manager or designee signs such contracts on behalf of the City Council, unless otherwise directed by City Council or provided for by law.

b. The Purchasing Officer or his/her authorized representative has sole authority to approve and sign purchase orders on behalf of the City, unless otherwise directed by the City Council or provided for by law.

c. Electronic and/or digital signatures on agreements or contracts are acceptable when in accordance with City policy and Secretary of State (Government Code Section 16.5) procedures established for digital and electronic signatures. The Purchasing Division, Records Management, and the City Attorney reserve the right to require original wet signatures on agreements or contracts when deemed to be in the best interest of the City.

d. It is the policy of the City that it remits payment for supplier invoices via electronic fund transfers through the Automated Clearing House ("ACH") network. All payments related to agreements of $25,000 and over shall be made through electronic ACH transfers.

e. Furthermore, it is the policy of City Council to establish and require the use of contract standards to assure that the interests of the City will be protected in all agreements or contracts.

6.1 Policy Amplification

a. To preclude claims against the City, all employees shall refrain from oral or written commitments that may be construed as binding by the other party.
    i. All employees shall emphasize to the other party that there is no commitment or contract until an agreement or contract is signed by the City Manager or designee.
    ii. Any employee that enters into an agreement or contract without the approval of City Council and/or City Manager as appropriate, or takes actions that are interpreted as commitments by a third party or leads to claims against the City, may be personally liable for any costs associated with the agreement or contract.

b. This policy will be accomplished primarily through the use of standard contracting procedures established and promulgated by the Purchasing Department of the Financial Services Agency.

c. It is the responsibility of each Agency or Department Head to assure that:
    i. Standard contracting procedures are followed in the preparation and processing of all agreements or contracts with the City Agency or Department.
    ii. All applicable standard contract terms and conditions are included in all agreements or contracts.
    iii. All agreements and contracts are reviewed by affected City Agencies or Departments (including the Purchasing Division) before being presented to the Office of the City Manager for approval by the City Manager or placement on the agenda for approval of City Council.
    iv. All revisions and updates to this policy and applicable procedures are promptly disseminated to personnel engaged in contract preparation and administration.

7.0 ANNUAL PURCHASE ORDERS

a. Annual Purchase Orders allow the City to purchase designated goods or services on a repetitive basis for City Agencies or Departments. Annual Purchase Orders shall be issued to a specific supplier on a per fiscal year basis and shall close at the end of the fiscal year. As the cost of the goods, services, and professional services approach the $150,000 threshold, an Agenda Report seeking approval will be submitted by the City Agency or Department to City Council.

b. The Annual Purchase Order system is for goods, services, and professional services that are purchased frequently or in large quantities by the City (provided on an "as-needed" basis). Annual Purchase Orders expedite delivery because separate requisitions are not required for each transaction. In the case of goods and certain services, the supplier agrees to supply the City's requirements at either a fixed price or at a fixed discount from the list market price. The Purchasing Officer will determine the goods, services, and professional services allowed by the Annual Purchase Order system.

c. Purchases by the Annual Purchase Order system include, but are not limited to, any expenditure that is recurring and is a reasonably predictable operating expense.

d. Only those items specified within the Annual Purchase Orders may be ordered using the Annual Purchase Order. Items not allowed under the Annual Purchase Order system shall be ordered in accordance with the City's purchasing policies and procedures:

    i. Using Agency or Department shall contact the supplier for a Quote or estimate, referencing the Annual Purchase Order, to confirm pricing matches negotiated pricing.
    ii. Using Agency or Department must review the quoted price and ensure compliance with the terms of the Annual Purchase Order.
    iii. Using Agency or Department shall ensure it has adequate budget funds for the proposed expenditure.
    iv. Using Agency or Department shall submit a requisition, which includes the quote or estimate, to the Purchasing Division noting the Annual Purchase Order it plans to utilize.
    v. Once the good is received or service accomplished, the invoice from the supplier shall be submitted to the Accounts Payable Division following the normal payment process for invoices.

8.0 RECYCLED PRODUCT PROCUREMENT

8.1 Policy Statement

a. In the procurement of goods for the City, a preference shall be given for the purchase of recycled goods whenever equal in fitness and quality and available at no more than the total cost of non-recycled products in accordance with Sections 2-6.30 and 6-3.701 of the City's Municipal Code.

8.2 Policy Amplification

a. It is the purpose of this policy to encourage purchasing decisions that (1) increase the recycled content of goods purchased and used by the City, (2) reduce waste in the manufacture and use of goods and packaging purchased by the City, (3) and to provide guidance to City staff in evaluating the purchase of goods for City use.

b. The objective is to ensure that no good manufactured with recycled or secondary material is treated differently other than based on function. A secondary objective is to prefer recycled goods over goods made strictly with virgin materials when recycled goods can meet the necessary performance standards.

9.0 SURPLUS PERSONAL PROPERTY

9.1 Policy Statement

a. The City's policy regarding disposition of City-owned surplus personal property is outlined in Section 2-6.31 of the City's Municipal Code. The Purchasing Officer is authorized to dispose of surplus goods which are not used or needed by any Using Agency or which have become unsuitable for City use. The City prohibits employees from acquiring surplus items sold through auction.

9.2 Policy Amplification

a. Timely identification of surplus and obsolete goods is essential to an effective disposition program. Higher maintenance and storage costs and further deterioration of the goods are the result of delayed identification of surplus.

i. Declaration of Surplus Goods. Using Agencies that determine certain goods to be of no use to their Agency must complete a "surplus property transaction request" and forward it to the Purchasing Officer for review and subsequent declaration as being surplus.

ii. Custody of Surplus Goods. Each Using Agency shall retain custody of its surplus goods until their transfer or final disposition has been determined. No Using Agency shall (in any event) permit any surplus goods held by it to be loaned or donated without prior City Council approval, or destroyed or otherwise removed from the City's custody without the prior written approval of the Purchasing Officer.

iii. Transfer. Before disposing of surplus goods, the Using Agency shall canvass all other Using Agencies to determine whether another City Agency can use the surplus goods. If another Agency desires to use the goods, the Purchasing Division shall assist in transferring the goods to that Agency.

iv. Disposition. The Purchasing Officer is hereby authorized to dispose of surplus goods which are not used or needed by any Using Agency or which have become unsuitable for City use. Such goods may be disposed of by any of the following procedures:

- Exchanged or traded in on new goods;
- Sold utilizing competitive procedures similar to those prescribed herein for open market procurement;

- Sold at public auction conducted by a professional auctioneer;
- Sold utilizing a negotiation process when the Purchasing Officer deems that such process is in the best interests of the City;
- Disposed of as scrap material or destroyed if no resale value exists; or
- Donated to a non-profit organization or other public entity following a City Council determination that such donation would serve a public purpose.

v. Once a good has been identified for surplus disposal, the Using Agency submits a request to the Purchasing Officer identifying the disposing procedure with approval from the Head of the Using Agency.

vi. If there is an asset number associated with the surplus goods, the asset number needs to be identified to alert the Accounting Division to have the asset removed from the asset list.

vii. Once all approvals are obtained, a notification of the approved surplus request is routed to the requestor for filing and/or further action.

10.0 PROCEDURES

10.1 PROCUREMENT AND PURCHASING AUTHORITY

10.2 Purchasing Division

a. The Purchasing Division is charged with interpreting and enforcing the City's purchasing policies and procedures. The Purchasing Division is authorized to issue purchase orders, contracts or agreements, and change orders; and is directed to oversee their implementation and its operations in accordance with the rules and regulations prescribed by City Council and the administrative procedures approved by the City Manager.

10.3 City Manager

a. The City Manager is authorized to execute written agreements or contracts (along with amendments or change orders) for all goods, services, professional services, and public projects with a cumulative term of up to five (5) years for which the cumulative value of the agreement or contract (inclusive of all amendments and/or change orders) does not exceed the City Manager's purchasing authority limit as may be established from time to time by resolution or other order of City Council.

b. If an amendment or extension to an agreement results in a financial commitment that exceeds the City Manager's purchasing authority or the five (5) year term limit, City Council authorization is required. The Agenda Report to the City Council shall include an identification of the annual and/or total expected cost and term of the agreement.

c. Amendments or extensions to agreements or contracts that exceed the City Manager's purchasing authority or the maximum term limitation (and City Council authorization is not obtained) require a new procurement process. A non-competitive justification does not preclude City Council authorization requirement.

d. The City Manager is authorized to execute written public project agreements or contracts within his or her purchasing authority limit. Change orders to public project agreements or contracts that exceed 75 percent of the approved contingency shall be signed by the City Manager.

e. The City Manager may delegate authorities granted by the City's Municipal Code Section 2-6.26 to subordinates provided that such delegation be made in writing and signed by the City Manager.

10.4 City Departments

a. Agency Heads and Department Heads, or their designees, consistent with the City's designated purchasing approval limits are authorized to approve and submit all purchase requisitions.

11.0 COMPETITIVE PROCUREMENT

a. Competition in purchasing provides equal opportunity for qualified suppliers to compete for City business and for City personnel to secure the best price, quality, and service. When bids are required, they are to be conducted on an open and competitive basis and without favoritism or bias in order to maximize the best value to the City and the procuring City Agency and/or Department. The bids of interested suppliers shall receive fair and impartial consideration.

b. The rules and regulations established by the City are intended to secure sound value, to guard against favoritism and profiteering at public expense, and to promote the interest of private enterprise and the health of the local economy. To further this objective, the City has elected to utilize an electronic bid management system as provided by Municipal Code Section 2-6.07 to (1) enhance the efficient procurement of goods, services, professional services, maintenance work and public projects, (2) encourage competition for public contracts, and (3) to purchase at the lowest competitive market price without favoritism or prejudice.

c. The estimated cost of each purchase is considered when determining the level of competition necessary. This ensures that the benefit derived from the competitive process justifies the cost of administering the process and that all legal requirements are met. Procurements shall not be split to circumvent dollar limits associated with procurement procedures.

d. Encouraging competition is a means by which the City can mitigate the potential for antitrust activity. A Non-Collusion Declaration is mandated by Public Contract Code Section 7106 and shall be completed in the procurement of all public projects. The Non-Collusion Declaration can be found on the City's Intranet.

12.0 NON-COMPETITIVE PROCUREMENT

a. Full and open competition should be the objective in public procurement; but it is not always possible or practicable. When procuring goods or services, City staff may determine the best value to the City may be achieved by pursuing a non-competitive procurement with a specific supplier due to technological, specialized, or other unique characteristics. Otherwise, as long as there is more than one potential supplier available to satisfy a given need, there exists insufficient justification for a non-competitive procurement.

12.1 Non-Competitive Purchases

a. A non-competitive purchase must be supported by written justification that thoroughly explains the need and reason for the requested course of action. A Non-Competitive Justification Form validates to the Purchasing Division of only one viable supplier for the procurement of the goods and/or services. It must be signed by the Agency or Department Head and submitted with the requisition or agreement or contract packet for the approval of the Purchasing Officer. With its submission of the Non-Competitive Justification form, the Department shall attach a detailed written rationale for the use of only one supplier and not competitively bidding the needed goods or services.

b. The following factors are among those that constitute justification for non-competitive purchases:

    i. The supplier is determined to be the only known source of the goods or services after solicitation of several suppliers, or seeking competitive bids and competition is determined to be inadequate.
    ii. The goods can only be procured directly from the original manufacturer or sole representative of the item in the City's geographical region.
    iii. There is a reasonable basis to conclude the City's minimum needs can only be satisfied by unique goods or services and the supplier demonstrates a unique qualification due to:
        - An innovative concept or a unique capability to provide the particular services proposed;
        - Proven expertise or specialized knowledge in a field of few known experts;
        - Previous experience providing like services to the City resulting in an understanding of City's immediate needs and practices increasing the likelihood of greater efficiency and success;

c. The use of a piece of equipment or commodity would require modifications to existing equipment, necessitate engineering re-design, or require voiding of a warranty.

d. Goods may be deemed available only from the original source in the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment, including major components thereof, when it is likely that award to any other source would result in:

    i. Substantial duplication of cost to the City that is not expected to be recovered through competition.

e. City property is released to a proven supplier who must dismantle equipment in order to assess repair needs and it is not practical or feasible to obtain competitive pricing for repair.

f. The existence of limited rights in data, patent rights, copyrights, or secret processes for the goods.

g. When only specified makes and models of technical equipment and parts will satisfy the City's needs for additional units or replacement items and only one source is available in accordance with the City's standardization program.

h. The item is one with which staff members who will use the item have specialized training and/or expertise and retraining would incur substantial cost in time and/or money.

i. Purchase of property for which it is determined there is no functional equivalent.

j. Existence of an unusual and compelling urgency (emergency purchase) with serious potential repercussions for the City resulting in the impracticality of a competitive purchase.

k. When the City determines (with the advice of legal counsel) that seeking competition would not produce an advantage, competitive bidding requirements may be waived.

12.2 Emergency Purchases

a. Emergency – When in an emergency, as defined in the Purchasing System, provided the procedures set forth in Section 2-6.24 of City's Municipal Code are followed.

Municipal Code Section 2-6.24, Emergency Procurements:

i. In cases of emergency when repair or replacements are necessary, the City Council (pursuant to a four-fifths vote of the City Council) may proceed at once to replace or repair any public facility without adopting plans, specifications, strain sheets, or working details or giving notice for bids to let contracts in accordance with California Public Contract Code Sections 22050 *et seq*. Before the City Council takes any action pursuant to this subdivision (a), it shall make a finding that the emergency will not permit a delay resulting from a competitive solicitation for bids and that the action is

necessary to respond to the emergency based on substantial evidence set forth in the minutes of its meeting.

ii. Pursuant to California Public Contract Code Section 22050, Subdivision (b)(1), the City Council hereby delegates to the City Manager or designee the authority to repair or replace a public facility, take any directly related and immediate action required by that emergency; and procure the necessary equipment, services, and supplies for those purposes without giving notice for bids to let contracts.

iii. If the City Manager or designee orders any action specified in subdivision (a), that person shall report to the City Council (at its next meeting required pursuant to this section) the reasons justifying why the emergency will not permit a delay resulting from a competitive solicitation for bids and why the action is necessary to respond to the emergency.

iv. (1) If the City Council orders any action specified in subdivision (a), the City Council shall review the emergency action at its next regularly scheduled meeting; and, except as specified below, at every regularly scheduled meeting thereafter until the action is terminated to determine (by a four-fifths vote) that there is a need to continue the action

(2) If the City Manager or designee orders any action specified in subdivision (a), the City Council shall initially review the emergency action not later than seven (7) days after the action, or at its next regularly scheduled meeting if that meeting will occur not later than fourteen (14) days after the action; and at least at every regularly scheduled meeting thereafter until the action is terminated to determine (by a four-fifths vote) that there is a need to continue the action (unless the City Manager or designee has terminated that action prior to the City Council reviewing the emergency action and making a determination pursuant to this subdivision).

(3) When the City Council reviews the emergency action pursuant to subdivision (1) or (2), it shall terminate the action at the earliest possible date that conditions warrant so that the remainder of the emergency action may be completed by giving notice for bids to let contracts.

b. Pursuant to Municipal Code Section 4-3.06(a), the Director of Emergency Services is hereby empowered to:

i. Request the City Council to proclaim the existence or threatened existence of a "local emergency" if the City Council is in session, or to issue such proclamation if the City Council is not in session. Whenever a local emergency is proclaimed by the Director of Emergency Services, the City Council shall take action to ratify the proclamation within seven (7) days thereafter or the proclamation shall have no further force or effect; and obtain vital supplies, equipment, and such other properties found lacking and needed for the protection of life and property and to bind the City for the fair value thereof (and, if required immediately, to commandeer the same for public use).

ii. In the absence of the Director of Emergency Services, the Assistant Director of Emergency Services is empowered to take on the powers of the

Director of Emergency Services under Section 4-3.06(a) of the City's Municipal Code. In the absence of both the Director of Emergency Services and the Assistant Director of Emergency Services, the Emergency Manager is empowered to take on the powers of the Director of Emergency Services under Section 4-3.06(a) of the City's Municipal Code. The Director of Emergency Services shall be deemed absent where he or she is unavailable to participate in meetings or otherwise is unable to perform his or her duties during an emergency.

13.0 PROCUREMENT CARDS

13.1 Procurement Card Purchases

a. This policy and procedures document aims to provide clear direction for City departments to request and oversee the use of procurement cards ("Procurement Card") assigned and utilized by authorized City employees. The Procurement Card program has been established to provide a convenient means to make purchases and reduce the costs associated with initiating and paying for those purchases. It will assist in reducing the cost of processing small dollar purchases, expedite delivery of required merchandise, and simplify the payment process. This policy establishes the minimum standards for departments administering the Procurement Card program. Departments may establish additional controls beyond those established by these procedures.

b. The Procurement Card represents the use of public funds; therefore, cardholders must know that their purchases represent the City's interests and reputation for ethical and prudent business dealings.

13.2 Procurement Card Issuance

a. To request a Procurement Card to a City employee, the City Agency or Department Head must complete a Procurement Card Request form and submit the form to the Purchasing Division. The form includes the respective employee's information, the expected types of purchases to be made and the requested card limit. The form is signed by the employee signifying the employee's understanding of the rules governing use of the Procurement Card.

b. Upon receipt of the Procurement Card Request Form, the Purchasing Division will coordinate the issuance of the Procurement Card through the issuing bank, or the bank serving the City as applicable. When the Purchasing Division receives the Procurement Card, the cardholder will be notified to make arrangements to pick up the card and sign that he/she has accepted the Procurement Card.

c. Each Procurement Card holder must activate his/her own Procurement Card. Activation instructions are enclosed with the cardholder's Procurement Card, and activation should be done immediately so the Procurement Card's initial activation instructions do not expire.

d. It is MANDATORY that all Procurement Card holders review the Procurement Card policies and procedures prior to use. Additionally, the Purchasing Division will conduct training for all cardholders. Each cardholder will be required to sign a form that he/she acknowledges these Procurement Card policy and procedures.

e. The Procurement Card is for the exclusive use of the cardholder. The unique Procurement Card that the cardholder receives has both the City and the cardholder's name embossed on the Procurement Card. No member of the cardholder's respective

Department, his/her family, or anyone else may use the Procurement Card. The Procurement Card has been labeled to avoid confusing it with the cardholder's personal credit cards, with the words "Cal-Card" or "State of California" on the top of the card. In all other respects, this is a regular credit card. THE CITY'S PROCUREMENT CARD SHALL NOT BE USED FOR PERSONAL PURCHASES. Although the Procurement Card is issued to a cardholder, it remains City property and may be rescinded at any time.

13.3 Procurement Card Use

a. Use of the Procurement Card requires the cardholder adhere to all City policies and procedures on procurement, including competitive bidding and the benefit of volume discounts or volume arrangements that the City has negotiated with selected suppliers over time.

b. This Manual limits single purchases (inclusive of sales tax and shipping charges) to $5,000, or the amount established by the cardholder's Department for that cardholder.

c. In addition, each Procurement Card has a monthly dollar purchasing limit. Each single purchase may be comprised of multiple items, but the total cannot exceed the single purchase dollar limit on the Procurement Card as established by the cardholder's department. Cardholders shall follow the City's procedures to ensure that sufficient funds are available in the budget line item, prior to making a purchase. Purchases shall not be split to circumvent purchasing regulations.

d. The cardholder may use the Procurement Card at any merchant that accepts VISA Procurement cards. If a supplier does not accept Procurement Cards, the cardholder may contact the Purchasing Division with the supplier's contact information so efforts can be made to set up that supplier for Procurement Card acceptance. Before signing the draft, the cardholder shall verify that the dollar amount is correct, and that sales tax has been included. The cardholder will be provided one copy of the signed sales draft, which he/she shall keep for reconciling the monthly Cardholder Statement of Account.

e. Any changes to the cardholder's information shall be immediately reported to the Purchasing Division. The Purchasing Division will notify the issuing bank of the changes and request a new card. If a replacement card is requested, the Procurement Card cardholder will be notified when the new card is available.

f. Contact the Purchasing Division to request a current Procurement Card be changed or cancelled via email or memorandum. Upon notification to the Purchasing Division, cut the Procurement Card in half or return it to the Purchasing Division in person.

g. Report lost or stolen cards immediately to the Purchasing Division.

13.4 Procurement Card Restrictions

a. The Procurement Card must not be used to purchase the following items:

   i. Alcoholic beverages

   ii. Weapons

   iii. Cash advances through bank tellers or teller machines, or money orders

   iv. Legal fees, court costs, fines, bails, or bonds

   v. Fixed asset purchases (an item or equipment with a cost of $15,000 or more)

   vi. Any personal items and personal services, even if the intent is to repay the City at a later date

   vii. Rental or lease payments

   viii. Purchase of telephone services including pagers and calling cards, except for business telephone calls charged to a hotel/motel room while traveling on City business

   ix. Fees for Upgrades of Air, Hotel (including early check-in), or Auto; unless pre-approved by the City Manager or designee

   x. Using the Procurement Card to circumvent normal purchasing steps in order to buy a product from a relative or close friend

13.5 Unauthorized Use of Procurement Card

a. Unauthorized use of the Procurement Card, including personal use of the Procurement Card or failure to adhere to the Procurement Card Program guidelines, shall result in the cancellation of the cardholder's use of the Procurement Card.

b. Upon an unauthorized use of the Procurement Card, the cardholder and their respective Agency or Department head will have three (3) working days to submit a written justification (email or memorandum) to the Purchasing Officer.

c. If a justification is not received or the offense is deemed a violation, the Procurement Card may be suspended. If a second unauthorized use occurs within a six (6) month period, and a written justification is not received or the use is deemed a violation, the cardholder's use of the Procurement Card system shall be suspended for three (3) months.

d. Repeated or flagrant violation of the authorized use of the Procurement Card by the

cardholder may result in disciplinary action. Fraudulent use of the Procurement Card may be referred to a law enforcement agency.

13.6 Procedures After Purchase

a. All receipts must be turned in monthly with the Procurement Card statement so they can be reconciled. At the close of each billing cycle, the cardholder will receive a Cardholder Statement of Account. The statement itemizes each transaction that was charged to the Procurement Card. Upon receipt of the statement, the cardholder must complete each of the following actions:

   i. Review the statement to verify that the cardholder purchased all items listed, and the amounts charged are correct;

   ii. Indicate the account string to be charged for each transaction;

   iii. Provide a brief description of the item(s) purchased for each transaction. For meals, receipts must itemize the meals ordered and document the meeting type and attendees;

   iv. Attach detailed sales receipts reflecting each item purchased;

   v. If an item purchased is returned, attach the credit voucher to the Statement of Account on which the credit appears;

   vi. If charged for an item incorrectly, try to resolve the problem with the merchant first. Provide a complete explanation of the error and attach it to the Statement of Account; and

   vii. After completing the above, sign and date the Cardholder Statement of Account. Thereafter, route the entire documentation to the respective Department Head for signature approval and then route the packet to the Accounts Payable Division for payment processing.

b. Please note that banks issuing Procurement Cards have operating regulations with specific timeframes established in which reversals of charges may be processed.

c. Upon separation from the City, it is the responsibility of the cardholder to notify the Purchasing Division of the separation and to surrender the Procurement Card to his/her authorizing manager for return to the Purchasing Division. Procurement Cards are to be returned to the Purchasing Division in person.

DO NOT SEND PROCUREMENT CARDS THROUGH THE INTEROFFICE MAIL.

14.0 PROCUREMENT SELECTION METHODS

14.1 Debarment

a. Public Contract Code 6109 prohibits contractors or subcontractors to bid on, be awarded, or perform work on a public works project if they are debarred pursuant to Sections 1771.1 or 1777.7. Before awarding a contract to a contractor, the Department shall check with the California Department of Industrial Relations (dir.ca.gov), the Department of Consumer Affairs Contractors State License Board (cslb.ca.gov), and the System for Award Management (sam.gov) database to ensure the contractor is currently registered with the State of California to perform the work required and is not debarred from participating in solicitations.

14.2 Electronic Bidding

a. The City's electronic bid management system shall be utilized to issue City solicitations, unless allowed by Appendix A or the Purchasing Officer deems the solicitation can be procured differently.

14.3 Solicitation Types

FORMAL BID PROCEDURE: The formal bid procedure shall be for all public projects exceeding two hundred thousand dollars ($200,000), or large dollar value procurements for goods or services. Types of procurement vehicles include:

a. **Notice Inviting Bids ("NIB"):** NIB is a formal procurement process released through the electronic bid management system and award may require a negotiated agreement or contract.
    i. Shall state the time and place for the receiving and opening of sealed bids and distinctly describe the project.
    ii. Shall be published at least fourteen (14) calendar days before the date of opening the bids in a newspaper of general circulation, printed and published in the jurisdiction of the City.
    iii. Shall be sent electronically, if available, by either facsimile or electronic mail and mailed at least fifteen (15) calendar days before the date of opening the bids to all construction trade journals specified in California Public Contract Code Section 22036.
    iv. Shall include a general description of the items to be purchased and shall state where bid forms may be obtained and the date, time, and place of bid opening.
    v. Bidders list shall be made available to all responsible, prospective suppliers known to City staff and others requesting, in writing, to participate in the bid process.

vi. If awarded, the bid will be awarded to the responsible bidder who submits the lowest responsive bid. Unless provided otherwise by law, the City shall have the right to waive any defect or informality in the bidding or in the procedures set forth in this section. Unless provided otherwise by law, no defect of informality shall void any contract entered into.

b. Request for Proposal ("RFP"): RFP may be used for non-public works projects or procurements whenever the City has identified a desired outcome, and the supplier is asked to propose a solution in response to the City's provided statement of work or specifications. The City may ask the suppliers to quote on the original specifications and to indicate how the quotation would be changed if the supplier's suggestion is followed. RFP procurement is released through the electronic bid management system.

i. This solicitation type will include a combination of the following elements:
- Statement of Work or Specifications
- Schedule or Timelines
- Deliverables
- Sample Contract
- Terms and Conditions
- Special Contractual Requirements
- Submittal Instructions
- Evaluation Criteria

ii. RFPs are not typically appropriate for award to the lowest responsible proposer submitting a responsive proposal.

iii. Award of an agreement or contract may be made to the most technically responsible proposer whose proposal provides the highest rated solution to the City based on the proposal and evaluation criteria and will require a negotiated agreement or contract.

c. Request for Qualifications ("RFQ"): City Council Resolution 2003-011 adopted bidder pre-qualification procedures and documents for public projects to streamline the bidding process by focusing staff efforts on the review and evaluation of only those bid responses submitted by pre-qualified bidders. It is highly recommended that this process be used for high dollar public projects.

INFORMAL BID PROCEDURES: Small to medium sized public projects as defined in Municipal Code Section 2-6.13 and procurements for goods, services and professional services with a defined list of attributes. Informal bid processes are released through the electronic bid management system and award may require a negotiated agreement or contract. Types of procurement vehicles include:

a. Invitation for Bid ("IFB"):

i. All procurements for small or medium public projects shall follow the procurement procedures found under Municipal Code Section 2-6-18 Informal Bid Procedure.
ii. All plan holders shall receive an invitation to bid.
iii. Informal bid contracts shall, whenever possible, be based on at least three (3) responsive bids.
iv. Shall be awarded to the lowest responsible bidder, consistent with quality and delivery requirements.
v. The City's standard term for an agreement is three (3) years with two (2) one-year options.

ALTERNATIVE BID PROCEDURES: When formal or informal bidding procedures are not required for goods, services, or professional services due to low dollar value, when the procurement is for an intended outcome versus a defined list of attributes, etc. Types of procurement vehicles include:

a. Informal Quotation ("quote"):

i. The quote procedure may be utilized for the procurement of goods, services, and professional services when the total value (inclusive of all taxes, delivery charges and fees) does not exceed $10,000 (per supplier, project, scope, or type of goods per Agency or Department).
ii. A Purchase Order may be issued for goods and for services with approved documentation.
iii. The City's standard term for an agreement is three (3) years with two (2) one-year options.
iv. Award is based on best value.

b. Request for Quote ("RFQ"):

i. The RFQ procedure may be used for the procurement of goods, services, and professional services when the total value (inclusive of all taxes, delivery charges and fees) does not exceed $25,000 (per supplier, project, scope, or type of goods or services per Agency or Department).
ii. The City's standard term for an agreement is three (3) years with two (2) one-year options.
iii. Award is based on best value.

c. **Request for Proposal ("RFP"):**
RFP may be used for non-public works projects or procurements whenever the City has identified a desired outcome, and the supplier is asked to propose a solution in response to the City's provided statement of work or specifications. The City may ask the suppliers to quote on the original specifications and to indicate how the quotation would be changed if the supplier's suggestion is followed. RFP procurement is released through the electronic bid management system.

i. This solicitation type will include a combination of the following elements:
- Statement of Work or Specifications
- Schedule or Timelines
- Deliverables
- Sample Contract
- Terms and Conditions
- Special Contractual Requirements
- Submittal Instructions
- Evaluation Criteria

ii. RFPs are not typically appropriate for award to the lowest responsible proposer submitting a responsive proposal.

iii. Award of an agreement or contract may be made to the most technically responsible proposer whose proposal provides the highest rated solution to the City based on the proposal and evaluation criteria and will require a negotiated agreement or contract.

DESIGN BUILD

a. The City may utilize a design-build method of procurement for public projects in accordance with California Public Contracting Code Section 22160 *et seq*.

15.0 AGREEMENTS AND/OR CONTRACTS

a. The City utilizes written contracts to document each party's obligation and to minimize the City's risks during the performance of work. The written contract often incorporates much more detail than a purchase order alone can provide, especially related to the operating terms and conditions and the details of the transaction itself. Contracts include standard terms and conditions that serve as the framework and a statement of work that serves as the substance of the contract. During the course of the relationship between the parties, the contract serves as a point of reference which may quickly resolve any misunderstanding.

b. When a Purchase Order and/or agreement or contract reaches or exceeds $150,000, an Agenda Report documenting City Council approval needs to be submitted to Purchasing authorizing the expenditure. If the contract is over multiple years (with set dollar values per year), the original Agenda Report submitted to Purchasing is generally sufficient to cover the period of performance of the Purchase Order and/or agreement or contract (inclusive of optional years) if so stated in the original Agenda Report with delegated signature authority to the City Manager.

c. Generally, the following situations are among those requiring written agreements in addition to a Purchase Order:

   i. Professional and consulting services
   ii. Construction services
   iii. Design services
   iv. Maintenance services
   v. Removal of hazardous materials
   vi. Major software license agreements
   vii. Work that takes longer than one year to complete
   viii. Goods purchased that need to be serviced by the same Supplier

d. The City's contract templates can be found on the City's Intranet. The City Agency and/or Department shall be responsible for ensuring that the most current contract template is used. Purchasing is responsible for updating the contract templates on the City's Intranet.

15.1 Terms

a. The City's standard agreement or contract term for ongoing services is three (3) years with two (2) one-year options, to be exercised at the City's discretion. The City requires all agreements and/or contracts to have defined effective dates. Auto-renewal language is NOT acceptable for agreements or contracts executed by the City.

15.2 Contingency

a. In order to mitigate delays due to unforeseen occurrences and minimize administrative costs associated with completion of procurements, all Departments have authority to exercise a standard contingency of up to 10 percent for any type of service contract or agreement. Exercising a contingency of 10 percent or less will not require City Manager or City Council action; however, any contingency amount in excess of 10 percent will require an amendment or change order with City Manager approval if the dollar commitment is within his signature authorization limit (or Council action if in excess of the City Manager's authority).

b. Construction change orders up to 75 percent of the City Council approved contingency amount may be approved by the Agency Head, contingency in excess of 75 percent City Council approved contingency amount shall require City Manager's signature.

15.3 Department Concurrence

a. **Business License:**

i. City Agencies and/or Departments submitting agreements and/or contracts must confer with the City's Business License Department to determine if a business license is required for the work. If the Business License Department indicates that a business license is not required for the proposed work, then documentation needs to be included in the submission to Purchasing.

ii. "Business" includes any business, commercial enterprise, trade, calling, vocation, profession, occupation, or means of livelihood (whether or not carried on for gain or profit). "Evidence of doing business" shall include but not be limited to a person's use of signs, circulars, cards, telephone books, newspapers, or trade publications to advertise, hold out, or represent that such person is doing business within the City; when any person gives other evidence of transacting and carrying on business within the City; or when such person fails to deny in a sworn statement given to the License Official that such person is not engaged in business within the City after being requested to do so by the License Official. An example of a potential exemption is a nonprofit business exempt from paying Federal income tax by virtue of nonprofit status.

b. **City Attorney:** When negotiations between a City Agency and/or Department and a supplier require changes to a contract template (or the supplier 's contract may be substituted for a City contract), documentation that the City Attorney's Office approved such changes need to be included in the submission to Purchasing.

c. **Communications and Community Relations Department:** Authorization by the Communications and Community Relations Department is required for procurement of all graphic and/or printing services by outside suppliers for:

i. Graphic Design;
ii. Print Services (all outsourced printing); and
iii. Promotional/Advertising Items using the City logo/marketing mark (including promotional items, apparel, etc.).

- The Communications and Community Relations Department will review the request for said services to determine if in-house services can be provided in-lieu of outsourcing or if it is in the best financial and uniformity interest to outsource the work. If the decision is made to outsource the work, the Communications Department will liaison with contracted suppliers. City Agencies and/or Departments must email the following to initiate this request: Communications@ontarioca.gov.

- For all promotional and/or advertising items, requests with mock proofs must be sent to Communications@ontarioca.gov for approval on use of the City logo/marketing mark to ensure uniformity of standards on use are being met prior to the purchase of items.

d. **Human Resources:** Authorization by the Human Resources Department ("HR") is required for procurement of all staffing services by outside suppliers for temporary, part-time, interim, or related personnel services (include documentation in the submission to Purchasing that HR has approved the request).

e. **Information Technology Services:** If the proposed statement of work will impact the City's Information Technology ("IT") hardware or software infrastructure, include documentation in the submission to the Purchasing Division that IT has approved the services.

f. **Risk Management:** Subject to Risk Management Department approval, insurance requirements may be waived in contract when there is low risk to the City. If an insurance provision is waived by the Risk Management Department, include documentation from the Risk Management Department of such waiver.

16.0 PURCHASE ORDER EXCEPTIONS

a. Invoices may not be utilized as backup documentation with a requisition to request generation of a Purchase Order ("PO"). Invoices must be approved utilizing the Accounts Payable approval process and submitted directly to the Accounts Payable Department.
b. Some purchases are not readily adaptable to the PO process. These purchases are usually for items where the competitive process is not applicable. These purchase exceptions are submitted to the Accounts Payable Division for payment processing. The following are allowable exceptions*:
    - Asset seizure payments/evidence reimbursements
    - City, County, State, Federal, or other municipality's services
    - City Procurement Cards
    - Collection services
    - Office and Janitorial supplies approved via Staples, Grainger, Waxie, Amazon
    - Dues, Memberships, and Digital Subscriptions (Ex. Newsletters, Grammarly, Snagit) (Digital Subscriptions Exclude IT Software Renewals and Maintenance Agreements)
    - Escrow fees and closing and rehabilitation loans (wire transfers)
    - Federal Express service & United Parcel Service (Delivery Services)
    - Fiscal agent trustee fee
    - Instructors and sports officials
    - Leases and rentals
    - Legal services
    - Display and recruitment advertising
    - Mail sorting services
    - Payroll deductions
    - Physical exams and medical treatments
    - Post Office fees and permits
    - Property acquisition costs
    - Property profile (lot book reports)
    - Refunds, rebates, and reimbursements (including petty cash)
    - Relocation payments
    - School Tuition
    - Temporary agency employees
    - Travel, conferences, meeting, and training expenses
    - Utility deposits and services

*Purchasing reserves the right to require an agreement and/or Purchase Order be issued for any of the above listed items, if deemed necessary or in the best interests of the City.

SUPPLEMENTAL

REFERENCES

ATTACHMENTS

- Appendix A – Purchasing Thresholds
- Appendix B – Authorization Recap
- Appendix C – Contract Matrix

REVISIONS

Review Date	Revision
June 30, 2023	
June 30, 2024	

APPENDIX A

PURCHASING THRESHOLDS

All values below include all taxes, fees, and shipping/freight charges.

a. $0 - $25,000 (Goods, Services and Professional Services):
   i. Although the use of the electronic bid management system is not required, the requisition requires the submittal of a minimum of one (1) Quote.
   ii. For services and professional services, including all applicable documents (e.g., a valid Business License, Risk Management approved insurance, etc.).
   iii. The award for goods is based on the lowest responsive and responsible bidder and the best value for professional services.
   iv. A purchase order for goods, services, or professional services may be issued.

b. $25,001 - $60,000 (Goods, Services and Professional Services):
   i. Use of the electronic bid management system is not required.
   ii. Whenever possible, shall be based on three (3) or more responses of an RFQ or an RFP process. To be considered competitive, you should obtain at least two (2) responses and submit them with the requisition.
   iii. The award for goods is based on the lowest responsive and responsible bidder and the best value for professional services.
   iv. For services, a negotiated agreement or contract is required.

c. $60,001 - $150,000 (Goods, Services and Professional Services):
   i. Use of the electronic bid management system to issue a NIB or an RFP.
   ii. Newspaper advertisement is not required.
   iii. Award based on best value, department required to justify selection.
   iv. For services, an agreement or contract is required.

d. $150,001 and above (Goods, Services and Professional Services):
   i. Use of the electronic bid management system to issue NIB or RFP.
   ii. Bid awarded based on best value. Department required to justify selection.
   iii. Professional services solicitation requires procurement by RFP procurement and evaluation based on the professional qualifications necessary for the satisfactory performance of the services needed.
   iv. RFP evaluation factors and their relative importance must be identified in the RFP. The City must have a written method for conducting the evaluation and selection of the supplier.
   v. City Council action is required.

PUBLIC PROJECTS:
With reference to Public Contract Code sections 22030 through 22045: Article 3. Public Projects: Alternative Procedure

a. Up to $60,000 (IFB)
May be performed {1} with City employees, or {2} with a qualified, properly licensed contractor using a negotiated Purchase Order and agreement or contract.

i. If City staff {1} is used, proper codes for Accounting and charging time and material is required.
ii. If a contractor {2} is used and project exceeds $1,000, prevailing wages are required.
iii. Payment bond equal to 100% of the contract required when >$25,000. A performance bond is recommended.
iv. A negotiated contract is required.

b. $60,001 - $200,000 (IFB):

i. Staff must follow the Act and the Informal Bid Procedure (see Purchasing Policies and Procedures and Purchasing System).
ii. Prevailing Wages are required.
iii. Bid bond equal to 10% of the bid price and payment bond equal to the contract price are required. Performance bond is strongly recommended.
iv. A negotiated contract is required.

c. $200,001 and above (NIB):

i. Staff must follow the Act and the Formal Bid Procedure (see Purchasing Policies and Procedures and Purchasing System).
ii. Prevailing Wages are required.
iii. Bid bond equal to 10% of the bid price and payment bond equal to the contract price are required. Performance bond is strongly recommended.
iv. A negotiated contract is required.

d. City Council action required for any procurement exceeding $150,000.

i. Once a Purchase Order and/or agreement or contract exceeds the $150,000, City Council approval is required for each future dollar amendment.
    - This includes each optional year unless the **total dollar value approved** by City Council for authority delegated to City Manager is inclusive of the dollar values of all optional years. Once that dollar value threshold has been exceeded the agreement is required to go back to City Council for approval.
    - The $150,000 threshold is **not limited to a fiscal year and it does not reset to zero** at the beginning of the new fiscal year.

APPENDIX B

AUTHORIZATION RECAP

Dollar Threshold	Purchase Type*	Agreement Type*	Authorization Requirement
$0 - $25,000	Goods, Services and Professional Services	Purchase Order	Agency or Department Head, City Manager or Designee
$25,001 - $60,000	Goods	Purchase Order	Agency or Department Head, City Manager or Designee
	Goods, Services, Public Projects, and Professional Services	Agreement and Purchase Order	City Manager or Designee
$60,001 - $150,000	Goods	Purchase Order	Agency or Department Head, City Manager or Designee
	Goods, Services, Public Projects, and Professional Services	Agreement and Purchase Order	City Manager or Designee
$150,001 +	Goods, Services, Public Projects, and Professional Services	Agreement and Purchase Order	City Council (Approval) City Manager or Designee (Executes Agreement)

For examples and thresholds for Purchasing and Agreement Types, see Appendix A, Purchasing Thresholds

i. Executive Director Community Life & Culture is authorized to execute Entertainment Agreements or Contracts up to $10,000.
ii. Executive Director of Public Works is authorized to execute Public Works Agency operations related purchase agreements and contracts up to $50,000.
iii. Utilities General Manager is authorized to execute Water & Sewer operations related Agreements or Contracts up to $50,000.

APPENDIX C

CITY OF ONTARIO - CONTRACT MATRIX - JULY 2024

TYPE OF CONTRACT	TYPE OF PROJECT	COUNCIL ACTION	CONTRACT VALUE	BIDDING REQUIREMENT	BONDS	ADDITIONAL COMMENTS
Model Construction Contract Documents *Model Document No. 29437851*	"Public project" means any of the following: (1) Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility (2) Painting or repainting of any publicly owned, leased, or operated facility (3) In the case of a publicly owned utility system, "public project" shall include only the construction, erection, improvement, or repair of dams, reservoirs, powerplants, and electrical transmission lines of 230,000 volts and higher (Pub. Con. Code § 22000)	Required for contracts more than $150,000 (OMC § 2-6.18(h))	$5,000 and over	Formal bidding over $200,000 (OMC § 2-6.17) Informal bidding $60,000 - $200,000 (OMC § 2-6.18)	Payment Bond required for contracts of $25,000 or more (Civ. Code § 9550) Performance Bond for the full value of the contract is strongly recommended but not required	• City issues Notice to Proceed to commence contract time • Use on Informal/Formal bid projects
Model Short Form Construction Contract *Model Document No. 33225207*	Intended for low risk public projects or maintenance projects ($200,000 or less) such as: • Maintenance or repair of streets or sewers • Construction, maintenance, or repair of water facilities or water works • All public projects, defined above, which do not require formal bidding ($200,000 or less)	Required for contracts more than $150,000 (OMC § 2-6.18(h))	Up to $200,000	Informal bidding over $200,000 (OMC § 2-6.18) Alternative Bid Procedure for $60,000 or less (OMC § 2-6.19)	Payment Bond required for contracts of $25,000 or more (Civ. Code § 9550) Performance Bond for the full value of the contract is strongly recommended but not required	• City issues Notice to Proceed to commence contract time • Can be used for "emergency" contracts if project is low cost and straightforward (Pub. Con. Code § 22050)
Model Engineering Department Construction Contract Documents - Caltrans Standard Specification *Model Document No. 29440147*	"Public project" means any of the following: (1) Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility (2) Painting or repainting of any publicly owned, leased, or operated facility (3) In the case of a publicly owned utility system, "public project" shall include only the construction, erection, improvement, or repair of dams, reservoirs, powerplants, and electrical transmission lines of 230,000 volts and higher (Pub. Con. Code § 22000) *Specially drafted for projects built pursuant to 2010 Caltrans Standard Specifications*	Required for contracts more than $150,000 (OMC § 2-6.18(h))	$5,000 and over	Formal bidding over $200,000 (OMC § 2-6.17) Informal bidding $60,000 - $200,000 (OMC § 2-6.18)	Payment Bond required for contracts of $25,000 or more (Civ. Code § 9550) Performance Bond for the full value of the contract is strongly recommended but not required	• City issues Notice to Proceed to commence contract time • Use on Informal/Formal bid projects built pursuant to 2010 Caltrans Standard Specifications
Model Engineering Department Construction Contract Documents - Greenbook *Model Document No. 33484528*	"Public project" means any of the following: (1) Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility (2) Painting or repainting of any publicly owned, leased, or operated facility (3) In the case of a publicly owned utility system, "public project" shall include only the construction, erection, improvement, or repair of dams, reservoirs, powerplants, and electrical transmission lines of 230,000 volts and higher (Pub. Con. Code § 22000) *Specially drafted for projects built pursuant to Greenbook*	Required for contracts more than $150,000 (OMC § 2-6.18(h))	$5,000 and over	Formal bidding over $200,000 (OMC § 2-6.17) Informal bidding $60,000 - $200,000 (OMC § 2-6.18)	Payment Bond required for contracts of $25,000 or more (Civ. Code § 9550) Performance Bond for the full value of the contract is strongly recommended but not required	• City issues Notice to Proceed to commence contract time • Use on Informal/Formal bid projects built pursuant to Greenbook

TYPE OF CONTRACT	TYPE OF PROJECT	COUNCIL ACTION	CONTRACT VALUE	BIDDING REQUIREMENT	BONDS	ADDITIONAL COMMENTS
Model OMUC Construction Contract Documents *Model Document No. 33349674*	"Public project" means any of the following: (1) Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility (2) Painting or repainting of any publicly owned, leased, or operated facility (3) In the case of a publicly owned utility system, "public project" shall include only the construction, erection, improvement, or repair of dams, reservoirs, powerplants, and electrical transmission lines of 230,000 volts and higher (Pub. Con. Code § 22000) *Specially drafted for OMUC projects*	Required for contracts more than $150,000 (OMC § 2-6.18(h))	$5,000 and over	Formal bidding over $200,000 (OMC § 2-6.17) Informal bidding $60,000 - $200,000 (OMC § 2-6.18)	Payment Bond required for contracts of $25,000 or more (Civ. Code § 9550) Performance Bond for the full value of the contract is strongly recommended but not required	• City issues Notice to Proceed to commence contract time • Always use on formally bid projects
Model Design Services Agreement *Model Document No. 33241256*	Engineering or architectural design services for a public facility or structure. Note: Formerly "Model Architect Services Agreement"	Required for all contracts over $150,000	Unlimited	Qualifications-based selection (OMC § 2-6.15)	Not usually required, but can be if the project dictates	• Will usually involve negotiation with architect on terms and scope • Contract awarded based on demonstrated competence and qualifications to satisfactorily perform the work (Gov. Code §§ 4526-4529)
Model Professional Services Agreement *Model Document No. 33225203*	Professional consultant (independent contractor) work, such as: • Financial • Economic • Accounting • Legal • Engineering (non-design) • Administrative	Required for all contracts over $150,000	Unlimited	Formal, informal, or alternative procedure (OMC §§ 2-6.14); Qualifications based selection (OMC § 2-6.15)	Not usually required, but can be if the project dictates	
Model Maintenance Services Agreement *Model Document No. 33225206*	"Maintenance work" includes all of the following: (1) Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purposes (2) Minor repainting (3) Resurfacing of streets and highways at less than one inch (4) Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems (5) Work performed to keep, operate, and maintain publicly owned water, power, or waste disposal systems, including, but not limited to, dams, reservoirs, powerplants, and electrical transmission lines of 230,000 volts and higher (Pub. Con. Code § 22000)	Required for contracts more than $150,000	Unlimited	Formal, informal, or alternative procedure (OMC §§ 2-6.14)	Payment Bond required for contracts of $25,000 or more (Civ. Code § 9550) Performance Bond for the full value of the contract is strongly recommended but not required	• Prevailing wages must be paid on most maintenance projects. Some **exceptions** include: – Janitorial/Custodian services – Security/Watchman services

TYPE OF CONTRACT	TYPE OF PROJECT	COUNCIL ACTION	CONTRACT VALUE	BIDDING REQUIREMENT	BONDS	ADDITIONAL COMMENTS
Model General Services Agreement ***Model Document No. 40935197.1***	"General Services" are those which are not considered Professional Services or Maintenance work. Some examples of situations for which a General Services Agreement would be appropriate are: • Party rentals (i.e., tables and chairs) • Basic computer services (i.e., off the shelf software) Alarm monitoring Services	Required for contracts more than $150,000	Unlimited	Formal, informal, or alternative procedure (OMC §§ 2-6.14)	Not usually required, but can be if the project dictates	• If the services contracted for are not Professional Services or Maintenance Services, then it will most likely fall under a General Services Agreement (if there is any question, consult with the City Attorney's office)
Model IFB Maintenance Services Agreement *Model Document No. 33437079*	"Maintenance work" (as defined by Pub. Con. Code § 22000, above) when informal or formal bidding is desired	Required for contracts more than $150,000	Unlimited	Formal, informal, or alternative procedure (OMC §§ 2-6.14)	Payment Bond required for contracts of $25,000 or more (Civ. Code § 9550) Performance Bond for the full value of the contract is strongly recommended but not required	• Prevailing wages must be paid on most maintenance projects. Some **exceptions** include: – Janitorial/Custodian services – Security/Watchman services • Use on Informal/Formal bid projects
Model Letter Agreement *Model Document No. 33241407*	For use on small projects (not included in definition of "public project" under Pub. Con. Code § 22000) such as professional and non-professional services involving little money, complexity, and risk to the City.	N/A	For services under $25,000 only	Formal, informal, or alternative procedure (OMC §§ 2-6.14); Qualifications based selection (OMC § 2-6.15)	Not required	Check with Risk Management for insurance/bond requirements
Model Equipment Purchase Agreement *Model Document No. 29443677*	Equipment purchases only	Required for contracts more than $150,000	Unlimited	Any formal, informal, or alternative procedure (OMC §§ 2-6.16)	Not required	Check with Risk Management for insurance/bond requirements
Model Amendment to Non-Construction Agreements *Model Document No. 9423414*	To be used to amend all non-construction agreements	Required when total value of contract or amendment is $150,000 or more	Unlimited	N/A	N/A	Check with Risk Management for insurance/bond requirements that may be triggered by new work added by amendment
Model Goods & Services Agreement *Model Document No. 31872872*	To be used when the City desires vendor to sell the materials and/or equipment to the City, and render services related to those goods	Required for contracts more than $150,000	Unlimited	Any formal, informal, or alternative procedure (OMC §§ 2-6.16)	Not required	Check with Risk Management for insurance/bond requirements
Model Construction Contract Documents w/ CDBG *Model Document No. 31389538*	"Public project" means any of the following: (1) Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility (2) Painting or repainting of any publicly owned, leased, or operated facility (3) In the case of a publicly owned utility system, "public project" shall include only the construction, erection, improvement, or repair of dams, reservoirs, powerplants, and electrical transmission lines of 230,000 volts and higher (Pub. Con. Code § 22000) *Specially drafted for projects built pursuant to CDBG Specifications*	Required for contracts more than $150,000 (OMC § 2-6.18(h))	$5,000 and over	Formal bidding over $200,000 (OMC § 2-6.17) Informal bidding $60,000 - $200,000 (OMC § 2-6.18)	Payment Bond required for contracts of $25,000 or more (Civ. Code § 9550) Performance Bond for the full value of the contract is strongly recommended but not required	• City issues Notice to Proceed to commence contract time • Use on Informal/Formal bid projects

NOTES:

1. Prevailing Wages must be paid on any "public works" or "maintenance" contract in excess of $1,000. **Note:** This is a broader definition than "public project" for public bidding purposes (See Labor Code §§ 1720, *et seq*. and 1771; 8 CCR §§ 16000 and 16001(f); and Department of Industrial Relations ("DIR") Precedential Decision List effective January 8, 2001 at www.dir.ca.gov). Please note DIR has set wage rates for some "professional" services performed on public works and maintenance projects.
2. Performance Bonds are generally not required by state law; however, they are strongly recommended to secure performance by the contractor and full and adequate completion of the project.
3. Risk Management **must approve** all insurance/bond waivers.
4. Payment Bonds are required by law for projects involving: (1) construction, alterations, additions, or repairs; (2) seeding, sodding, or planting for landscaping purposes; (3) filling, leveling, or grading work; and (4) demolition or building removal work (See Civil Code Sections 8038 and 9550).

REVISED July 2024

CITY OF ONTARIO
ADMINISTRATIVE POLICY

SUBJECT	Number: *FSA-001*
Travel and Expense Reimbursement Policy	**Effective Date:** January 1, 2024
	Revision Date: November 7, 2023
	Policy Owner(s): Financial Services Agency

PURPOSE

The primary goals and objectives of this Travel and Expense Reimbursement Policy are:

1. To document the allowable business expenses eligible for reimbursement. These include necessary and reasonable expenses as defined under Section 162 of the Internal Revenue Code. This policy applies to all travel expenses regardless of the source of funds.

2. To establish a uniform policy for reimbursing members of legislative bodies as defined in the Brown Act for expenses incurred for travel, meetings, and other expenses incurred while on official business for the City of Ontario, and/or Ontario Housing Authority.

3. To define official City business activities to ensure that public resources should only be used when there is sufficient benefit to the City. Examples of such benefits, include:

    - The opportunity to discuss the community's concerns with state and federal officials;
    - Participating in regional, state and national organizations whose activities affect the City of Ontario;
    - Attending educational seminars designed to improve an official's or employee's skill and information levels; and
    - Promoting public service and morale by recognizing service to the City.

4. To keep expenses within community standards for public officials. If expenses are incurred which exceed these guidelines, the cost borne or reimbursed by the City will be limited to the costs that fall within the guidelines.

5. To satisfy the requirements of Government Code sections 53232.2 and 53232.3.

SCOPE

The requirements of Government Code Sections 53232 et seq specify that the provisions of this policy shall apply to all members of legislative bodies as defined in the Brown Act. This currently includes the Mayor and City Council Members, members of the Planning Commission, Recreation and Parks Commission, Library Board of Trustees, Museum of History and Art Board of Trustees, and Public Art Advisory Commission, and agency/department head positions whose positions are designated as members of the Development Advisory Board. This policy shall also apply to the City Clerk and City Treasurer, and all positions in the Executive Management and Department Head units as now constituted and as modified in the future within the City. In addition, this policy applies to all City full-time and part-time employees, volunteers, and other individuals representing the City of Ontario on official business.

This Travel and Expense Reimbursement policy is effective July 1, 2023, and supersedes any other travel and expense reimbursement policies or administrative policies related to the matters included in this Travel and Expense Reimbursement policy. Under the provisions of the Public Records Act, all Statement of Expenses Forms, Travel Request and Authorization Forms, and any accompanying receipts are public records and subject to disclosure.

1.0 POLICY REQUIREMENTS

1.1 Substantiation of Expenses

a. All expenses must be accompanied by a detailed receipt or supporting documentation, except for meals and incidental expenses as the City of Ontario offers a per diem rate as an option in-lieu of actual meals and incidental costs. Failure to provide such documentation will result in denial of reimbursement.

b. Individuals are expected to show good judgement in nature of expenses incurred during traveling. Expenses for members of the individual's family who accompany him/her on a trip are not reimbursable. The expense report must reflect only the expenses incurred by the elected/appointed official, employee, or volunteer for that specific travel.

c. The City of Ontario reserves the right to deny reimbursement of expenses that are considered lavish, extravagant, or are unsupported by required documentation. Unusual expenses incurred due to special circumstances may be approved by the City Manager or designee, when in the City Manager's judgement, such expenses are justified.

1.2 Falsification of Expenses

a. Submitting fraudulent receipts or falsifying your expense report will result in loss of your reimbursement privileges and may lead to disciplinary action, up to and including termination of employment. (Also see Violation of Policy Section.)

1.3 Eligible Expenses

a. Expenses shall be appropriately related to City business. Expenses incurred in connection with the following types of activities generally constitute authorized expenses, if the other requirements of this policy are met:

i. Attendance and participation in regional, state, and national organizations whose activities affect the City's interests;

ii. Communicating with representatives of regional, state, and national government on City policy positions;

iii. Attendance and participation in conferences, workshops, training, and educational seminars to improve skills and information levels;

iv. Attendance at events that recognize service to the City by others;

v. Attendance at other events in an official capacity, including attendance and participation in international trade promotions and economic development program activities, and other activities to promote the interests of the City;

vi. Implementing an approved strategy for attracting or retaining businesses to the City, which will typically involve at least one staff member; and

vii. Expenses incurred relating to the ongoing operations of City business, such as materials and supplies, membership dues, equipment and tools, and certifications. These expenses should not exceed $500 without the prior approval of the Executive Director of Finance or designee.

b. Reimbursement of expenses for other City business shall require prior approval by the City Manager or designee, with the concurrence of the Executive Director of Finance or designee. In the event an official or agency/department head is uncertain as to whether a request complies with this policy, such individual should seek resolution from the City Manager and the Executive Director of Finance. Any questions regarding the propriety of a particular type of expense should be resolved by the approving authority before the expense is incurred.

1.4 Non-Reimbursable Expenses

Examples of non-reimbursable expenses include, but not limited to, the following:

- Alcohol
- Tobacco and Other Related Products (i.e., e-cigarettes, vape, hookah, etc.)
- Internet (except when pre-approved by the Agency Head)
- Car Repair and Maintenance (including car washes)
- Credit Card Interest Charges
- Day-Care for Children/Dependents
- Expenses Reimbursed by another Agency, Supplier or 3rd Party
- Fees for Upgrades of Air, Hotel, or Auto (unless pre-approved by the City Manager or designee)
- Flowers/Plants (except for City sponsored events and employee/retiree/City official funeral and/or memorial services)
- Headphones on Airlines
- Health Club Fees
- Laundry or Dry Cleaning Services
- Medicines/Drugs (prescription and over the counter)
- Movies (either in-room, on the plane/train, or at the theater)
- Personal Bar Bills
- Personal Books, Magazines, or other Entertainment
- Personal Celebrations, including Birthdays, Baby Showers, Promotions, Retirements (except a retirement cake for an Ontario employee, elected/appointed official or volunteer will be reimbursable), Wedding Showers, etc.
- Personal Losses incurred during the Business Trip
- Personal Travel Portion during, before or after the Business Trip
- Pet Hotel Stays or Pet Transportation

- Political or Charitable Contributions
- Rental/use of scooters, motorcycles, bicycles, and other motorized/non-motorized equipment (excludes the rental of vehicles through the City's corporate account)
- Spa Treatments, Massages, Hair Cuts and other related costs, Manicures, or Pedicures
- Sporting Events, Theater, Cinema, Opera, or Concert Tickets
- Spouse's/Partner's Expenses if Accompanying a City of Ontario Employee on Travel
- Toiletries
- Traffic Citations (Parking Tickets, Fines, or Toll Road Penalties)
- Travel in a Personal owned Aircraft, Boat or Non-Legal Vehicle for Streets/Roadways
- Valet Parking (if Self-Parking is Available at a Lesser Cost

1.5 Travel/Spend Authorizations

a. All City employees, elected/appointed officials, and volunteers must have their **Travel Authorization or Spend Authorization** submitted electronically in the Expense Module and approved by their Agency/Department Head for all City business travel outside of the Ontario city limits. All Spend Authorizations are subject to approval by the Executive Director of Finance or designee.

b. All **out-of-state and/or out-of-country travel** on City business requires approval from the City Manager or designee. Travel Authorizations or Spend Authorizations must be approved prior to incurring expenses related to the travel and shall include an explanation of the purpose of the travel.

c. Spend Authorizations are not required for emergency related travel including Fire Suppression personnel assigned to the Fire Strike Teams and City business related to City services provided to other municipalities (i.e., Dispatch Services). However, it is expected that approval is obtained through the normal process required of the City agency or department the City staff are assigned to.

d. Receipts or other proof of fee for travel expenditures must be obtained and submitted with the travel expense report, except for meals and incidentals if the per diem option is being used. No travel expense reimbursement shall be made in excess of the actual cost of the travel.

1.6 Expense Report Submissions Deadline

a. Travel Expense Reports are due within **30 days** of the travel. Failure to submit the completed travel reimbursement request electronically through the Employee Expense Module within the 30 days of the travel date may forfeit all reimbursable travel expenses.

b. When the travel reimbursement form is submitted beyond the 30-day time limit, a written explanation to the Executive Director of Finance or designee is required to explain the reason for the late submission before the employee's travel expense reimbursement request is processed.

2.0 REIMBURSEMENT REQUIREMENTS

2.1 Meals and Incidental Expenses

Reimbursement for meals and other incidental expenses while traveling on City business shall be based on either:

a. **Actual receipted expenses** not to exceed a reasonable amount per meal or,

b. **The IRS' established standard meal allowance**, also known as "Per Diem" amount, is the daily allowance amount for meals and incidental expenses while traveling as established and maintained by the Federal General Services Administration and as referenced in IRS Publication 463. The Per Diem amount is only available for travel that requires an overnight stay and the full Per Diem amount is pro-rated 75% for travel days, as well as adjusted for any meals provided by the host or others at the travel event,

c. Or for **travel outside the City of Ontario limits that consists of a full day** (8 hours or more), full-time City employees are eligible to be reimbursed at the Federal General Services Administration established standard meal allowance amount included for lunch (currently $16 for San Bernardino County) as a Daily Allowance" for each day that consists of a full day and where lunch is not provided by the event. The Daily Allowance amount will not be pro-rated or given for any travel less than 8 hours.

d. Elected/Appointed Officials, Executive and Department Head employees, part-time employees, volunteers, and contractual individuals representing the City of Ontario on business related matters are **not** eligible for the Daily Allowance Per Diem; however, they would be allowed to submit an actual receipt, to not to exceed a reasonable amount, for reimbursement. The "Daily Allowance" will be reimbursed when the expense statement is submitted.

2.2 Travel Advances

All full-time City of Ontario employees are eligible to request a travel advance for the applicable Per Diem amount for meals and incidental expenses based on the IRS' established rates. Elected/Appointed Officials, Executive and Department Head employees, part-time employees, volunteers, and contractual individuals representing the City on business related matters are **not** eligible for the Travel Advance. They may seek reimbursement for the applicable Per Diem amount when submitting their Expense Statement.

a. A Travel Advance request will be submitted electronically in the Expense Module at **least two weeks prior to the travel event**. The Travel Advance is only available for travel that requires an overnight stay and the full Per Diem amount is pro-rated 75% for travel days, as well as adjusted for any meals provided and/or paid by the host or others at the travel event.

b. **The Travel Advance will only include the IRS' established meal allowance**. It will **not** include any other expenses related to the travel event, including hotel stay, parking, event registration, air fare and other transportation costs, as well as any other travel cost incurred that does not fall under the IRS' established meal allowance. These costs will either be paid in advance (if possible) by the City via a request for payment submitted electronically to the Supplier Module and/or use of a City credit card.

c. Those expenses not eligible for prepayment, will be paid by the attendee either through a City credit card or by the attendee directly. Reimbursement for those eligible expenses paid by the attendee, will be reimbursed after the travel event is concluded and the attendee has electronically submitted the Expense Statement in the Expense Module.

d. **Only one Travel Advance** at a time will be issued to the requestor. If another Travel Advance is requested and the prior Travel Advance has not been settled with the submission of a completed Expense Statement, the other Travel Advance will be denied.

e. When the employee has not fully utilized their per diem travel advance, the employee is required to remit the **unused balance to the City's central cashier** and submit the cashier receipt as proof of the repayment as supporting documentation when submitting their statement of expense.

2.3 Airfare and Other Transportation Costs

Elected/Appointed Officials, Agency and Department Head employees, full-time and part-time employees, volunteers, and contractual individuals representing the City of Ontario on business related matters shall use the most economical mode and class of transportation reasonably consistent with scheduling needs and cargo space requirements, as well as use governmental and group rates when available.

a. **All airfare and other transportation costs** shall be paid either by the City using a City credit card and/or submitting a request for payment electronically through the Supplier Module. If not possible, then the airfare and other transportation costs will be paid directly by the individual traveling.

b. **Airfare** shall be booked to and from Ontario International Airport. If extenuating circumstances exist, written justification must be provided to the City Manager or designee for approval before booking at a different airport. Airfare shall be booked as far in advance as possible to achieve the most reasonable airfares. Airfare expenses are limited to coach or economy classes available with commercial airlines. Airfares that are equal to or less than those available through the Enhanced Local Government Airfare Program offered through the League of California Cities, the California State Association of Counties, and the State of California are presumed to be the most economical and reasonable for the purposes of reimbursement under this policy. Due to the intricate nature of the City business conducted by members of the City's Executive team, additional airfare costs may be incurred with the prior approval of the City Manager or designee.

c. **Train or Rail Travel** shall be utilized as an alternate form of transportation unless the cost of such service is greater than travel in a personal or city vehicle or the use of such service is impractical.

d. **Baggage** is limited to two bags per employee except for when additional bags are needed due to the requirement to travel with equipment as it relates to City business.

e. **Car Rental** shall receive prior approval by the Agency Head**.** The City of Ontario has a corporate account with Enterprise Rental Car Company. Elected/Appointed Officials and City employees shall use Enterprise unless availability and cost dictates otherwise. Coordinate all rental car reservations with the City's Purchasing Division. Guidelines to follow when renting cars:

   i. Compact/economy models must be rented unless more than two people are traveling together.

   ii. When two or more employees are traveling together, they should rent the most economical vehicle available.

   iii. Gasoline charges by the rental company are not reimbursable. Rental car should be returned with a full tank of gasoline obtained prior to dropping off the vehicle.

   iv. Rental cars should be returned to the original rental location to avoid costly drop-off charges.

   v. Additional charges for optional insurance and upgrades offered by rental car agencies are not an eligible expense.

   vi. Fuel costs, parking fees, and bridge or road tolls related to rental car travel are eligible for reimbursement based upon receipts.

f. **Mileage Reimbursement for Travel** is the per mile reimbursement of all vehicle expenses for use of a person's private vehicle while on official City business. All reimbursements for mileage shall be submitted electronically through the Expense Module within 30 days of incurring the expense. Guidelines to follow when requesting mileage reimbursements:

g. Elected Officials, Agency and Department Heads, and other City staff that receive a Vehicle Expense Reimbursement Allowances or are issued a City vehicle for conducting City business are **not** eligible to receive Mileage Reimbursement for local travel.

h. For employees and officials that do not receive a monthly Vehicle Expense Reimbursement Allowance for use of their personal vehicle, automobile mileage is reimbursed at Internal Revenue Service mileage reimbursement rates presently in effect under IRS publications shall apply.

i. These per mile rates compensate the employee for gasoline, insurance, maintenance, and other expenses associated with operating the vehicle. This amount does not include bridge and road tolls, which are reimbursable.

j. Use of a personal vehicle by an employee must be a vehicle that is legal to be driven on all City, State and Federal streets, roadways and highways, and must receive prior approval by the Agency/Department Head.

k. If on official City business outside of the City boundaries, proof of mileage shall be included when submitting for reimbursement. Proof of mileage for City business travel within the City boundaries is not required.

l. When personal vehicles are approved as a mode of travel outside of the City boundaries, the distance shall be calculated based on the shortest distance from the employee's work location or the employee's primary residence to the point of destination, whichever is less.

m. The cost associated with using a personal vehicle for overnight travel should be compared to the cost of air or train travel and eligible rental car or other transportation expenses. If the costs associated with using a personal vehicle for overnight travel exceed the comparable costs associated with air or train travel, then the maximum mileage reimbursement shall be based upon the costs of air travel. Declaration of using a personal vehicle for overnight travel must be included in the Travel/Spend Authorization electronically submitted to the Expense Module and approved by the Agency/Department Head and the Executive Director of Finance or designee.

n. **Travel in City Vehicles** may be approved when circumstances warrant it. When traveling in a City vehicle, receipts should be secured for the purchase of gas, oil, and other supplies necessary while in route. These amounts should be included in the expense statement, with a notion that a City vehicle was used, indicating the fleet number of the vehicle. The amounts of these charges must be included in the transportation category. If emergency repairs are necessary, the person to whom the vehicle is assigned must contact their Agency/Department Head, as well as the Fleet Services Manager to determine proper course of action. All receipts for such payment must be furnished to obtain reimbursement.

o. **Monthly Auto Allowance** is a monthly amount paid to elected officials and designated Agency/Department Heads as for all expenses related to the operation and maintenance of a vehicle for local use on official City business. The monthly Vehicle Expense Reimbursement Allowance shall be as specified in the Compensation Profile for Executive Management Employees, Department Head Employees, and Association of Ontario Management Employees. Those elected officials and employees receiving a monthly auto allowance are not eligible for mileage or fuel reimbursement unless personal vehicle travel is in excess of 250 miles and prior approval from the City Manager is granted.

2.4 Hotel and Lodging Expenses

Eligible costs for Hotel and Lodging are generally the group rate for lodging when attending conferences or the government rate, when available.

a. The maximum Lodging Expense Amount is **$460.00 per night excluding hotel parking fee, data fees and taxes as of July 1, 2023**. This maximum rate shall be increased annually based upon the percentage change in the Consumer Price Index (CPI) for the Riverside-San Bernardino-Ontario region.

b. Any hotel or lodging costs greater than the maximum allowed per night will require prior approval from the City Manager or designee and concurrence with the Executive Director of Finance or designee.

c. Hotel/Lodging accommodations should be appropriate to the purpose of the trip. Individuals are expected to use good judgement in the selection of hotel/lodging accommodations offering competitive rates. Guidelines to follow when reserving accommodations for hotel or lodging:

i. Hotel or lodging accommodations are allowed when the overnight event is greater than **30 miles away** from the employee's work location or primary residence (whichever is less), or longer than a **60-minute commute one way**.

ii. With advance City Manager approval, hotel reimbursement may be authorized for multi-day events that take place in cities less than 30 miles from the employee's work location or primary residence.

iii. Overnight stays at Airbnb's and other short-term rentals will **not** be approved.

iv. Sharing accommodations with other City of Ontario employees is not mandated nor encouraged.

v. For one-day seminars, conferences or other travel, hotel/lodging accommodations are not reimbursable unless approved in advance by the City Manager or designee and appropriate due to the locations or event schedule.

vi. The City does not reimburse for hotel/lodging stay if the employee wishes to stay one day after the conference has been completed in the Pacific Time Zone. If the conference is in the Mountain, Central, or Eastern Time Zones, the employee may travel the day after the conference has been completed.

vii. The hotel in which the individual decides to stay should be located within walking distance to the event or place of business, where possible, to minimize the need for transportation – rental car, bus, taxi, ride share (Uber/Lift), trolley, etc.

viii. The individual shall pay for any extra hotel charges, including but not limited to, the following: newspapers, snacks, snack bar, mini bar, pay per view TV, access to internet services (unless prior approval is obtained by the Agency Head), access to the hotel gym, spa treatment, dry cleaners, laundry, valet parking (if self-parking is available), etc.

ix. **No alcohol or other prohibited expenses are allowed** on the hotel/lodging receipt. It is the responsibility of the attendee to be responsible for payment of those expenses on a separate invoice.

x. An employee shall notify the City in advance if they are opting for other lodging arrangements, such as staying with family and/or friends during their travel. These other accommodations are not reimbursable.

xi. In the event of an emergency, lodging expenses incurred within the City of Ontario's boundaries (for example, the Fire Strike Team), shall be reimbursed in accordance with this Travel and Expense Reimbursement Policy as it relates to City business. These lodging expenses shall receive prior approval from the designated Director of Emergency Services and/or Incident Commander.

xii. Planning Advisory Board, Chaplains, West End Emergency Response, and other personnel from other cities lodging may be reimbursable by the City of Ontario only with prior approval of the City Manager or designee.

2.5 Other Miscellaneous Reimbursements

a. Commercial Driver's License Reimbursement

City employees who are required to obtain and maintain a commercial driver's license (Class A or Class B) per their respective bargaining group's Memorandum of Understanding (MOU) shall be reimbursed by the City for the difference between the commercial driver's license fee and the Class C driver's license fee, subject to the approval by their respective Agency/Department Head and the Executive Director of Finance or designee.

b. Membership Dues and/or Certifications Reimbursement

Membership dues and/or certifications are eligible for reimbursement if they are related to the City employee's job at the City, subject to approval by their respective Agency/Department Head and the Executive Director of Finance or designee.

c. Out-of-Pocket Expense Reimbursement

Qualified expenses incurred by employees related to City business (materials, supplies, etc.) are eligible for reimbursement, subject to approval by their respective Agency/Department Head and the Executive Director of Finance or designee.

d. Safety Shoe Reimbursement Allowance

Employees who are required to wear safety shoes shall be reimbursed up to amount specified in their respective bargaining group's Memorandum of Understanding (MOU) per fiscal year for such shoes. The shoes shall meet ASTM or other industry approved standards appropriate for the employee's work assignment and classification, as determined by the Agency/Department Head and Executive Director Human Resources/Risk Management.

e. Technology Expense Reimbursement Allowance

Elected officials shall receive a monthly technology expense allowance to reimburse for all expenses related to monthly cellular telephone charges, additional telephone charges for facsimile machine use at their residences and/or offices, internet access and account maintenance charges to maintain internet access at their residences and/or offices, which may be necessary in the conduct of City business.

f. Tuition Reimbursement

To encourage all City employees to continue educational development, specified employees may be eligible for reimbursement of tuition expenses, per the guidelines stated in their respective Memorandum of Understanding (MOU). Tuition reimbursements are subject to the approval by their respective Agency/Department Head, Executive Director Human Resources/Risk Management or designee, and Executive Director of Finance or designee.

3.0 Reporting Requirements for Elected and Non-Elected Officials

3.1 Elected Officials - Mayor, City Council, City Clerk and City Treasurer

At the first City Council meeting following a meeting attended at City expense and during the Council Matters section of the City Council Meeting Agenda, members of the City Council (Elected Officials, including the Mayor, City Council, City Clerk, and City Treasurer) shall provide a brief oral or written report regarding a meeting or conference attended at City expense. In accordance with Government Code Section 53232.3(d), the term "meeting" shall mean a meeting of the majority of the members of a legislative body as defined in the Brown Act. For example, if three Council Members were to meet with a Congressperson in Washington D.C. regarding an item concerning the City of Ontario, then the Council Members would be required to report such attendance at the next regular City Council meeting. A joint report may be made. In addition to the mandatory reporting set forth above, when Council Members attend a conference or organized activity conducted in compliance with Section 54952.2(c) of the Government Code, a report shall be made.

3.2 Non-Elected Officials – Commissioners and Board Members

At the first Commission or Board meeting following a meeting or conference attended at City expense and during the Commissioner/Board Reports section of the Commission or Board Meeting Agenda, members of the Commission/Board shall provide a brief oral or written report regarding a meeting attended at City expense. In accordance with Government Code Section 53232.3(d), the term "meeting" shall mean a meeting of the majority of the members of a legislative body as defined in the Brown Act. A joint report may be made. In addition to the mandatory reporting set forth above, when Commissioners or Board members attend a conference or organized activity conducted in compliance with Section 54952.2(c) of the Government Code, a report shall be made.

This applies to all appointed members of the Planning Commission, Recreation and Parks Commission, Library Board of Trustees, Museum of History and Art Board of Trustees, and Public Art Advisory Commission.

Reporting requirements do not apply to others covered by this policy.

4.0 Violation of Policy

4.1 Violation of Policy – Elected Officials

Use of public resources or falsifying expense reports in violation of this policy may result in any or all of the following: 1) loss of reimbursement privileges, 2) a demand for restitution to the City, 3) the agency's reporting the expenses as income to the elected official to state and federal tax authorities, 4) civil penalties of up to $1,000 per day and three times the value of the resources used, and 5) prosecution for misuse of public resources.

4.2 Violation of Policy – Non-Elected Officials and City Employees

Use of public resources or falsifying expense reports in violation of this policy may result in any or all of the following: 1) loss of reimbursement privileges, 2) a demand for restitution to the City, 3) the agency's reporting the expenses as income to the elected official to state and federal tax authorities, 4) civil penalties of up to $1,000 per day and three times the value of the resources used, 5) prosecution for misuse of public resources, and 6) disciplinary action, up to and including termination of employment.

SUPPLEMENTAL

REFERENCES

ATTACHMENTS

REVISIONS

Revision

Personnel Rules and Regulations

City of Ontario

January 1990

Contents

RULE I. DEFINITION OF TERMS

SECTION 1. ADVANCEMENT

The incremental increase granted to an employee within a pay range after a satisfactory period of service.

SECTION 2. ALLOCATION

The grouping of all positions having duties and responsibilities of a similar nature into the same class.

SECTION 3. APPOINTMENT

The act of filling a vacant position with an individual who has met the qualifications for that position.

SECTION 4. APPOINTING AUTHORITY

The officer of the city who has the authority to make an appointment to a position, subject to the approval of the City Manager.

SECTION 5. CLASS

A group of positions with duties, responsibilities, and functions so similar in nature that they can be given the same title, pay, and promotional opportunities. In addition, the same tests, experience, ability, and standards can be applied equally to all persons in this class.

SECTION 6. DEMOTION

The movement of an employee from one class to another class having a lower maximum rate of pay.

SECTION 7. ELIGIBLE

Any individual who has successfully passed a competitive examination or interview and who has his/her name placed on an eligible list.

SECTION 8. ELIGIBLE LIST

A list of eligible applicants for a position ranked according to the score they received on a competitive examination.

SECTION 9. EMERGENCY

A circumstance requiring immediate action; a sudden, unexpected happening; an unforeseen occurrence or condition.

SECTION 10. EMPLOYEE

A. Permanent. Any employee who has successfully completed a probationary period in a specific classification and is retained in that classification in accordance with these Rules and Regulations.

B. Probationary. Any employee appointed to fill a permanent position, but who has not completed the trial or probation period.

C. Provisional. A person possessing only minimum qualifications who is appointed to a position because no others have applied. Such appointment must be reviewed by the Personnel Office at the end of a six-month period.

D. Part-Time. An employee working a fraction of the normal work day and whose hours may be regular or irregular. No employee benefits will accrue to part-time employees working less than twenty hours per week.

E. Temporary. A person employed to meet a short-term need of the City. An employee cannot remain in this category over six months without the express approval of the Personnel Officer.

SECTION 11. EMPLOYMENT LIST

Any eligible, promotional, or reemployment list maintained by the City.

SECTION 12. EXAMINATION

A. Assembled. A test or tests conducted at a specified time and place at which applicants are required to appear for competitive examination under the supervision of an examiner.

B. Unassembled. A test or tests consisting of an appraisal of training, experience, work history, and any other data that may be relevant in evaluating the relative qualifications of applicants.

C. Promotional. A test or tests given only to City employees to establish an eligibility list for a vacant position.

D. Open Competition. A test or tests given to all qualified applicants after a suitable period of advertising to establish an eligible list for a vacant position or any future vacancies that may occur.

SECTION 13. HOLIDAY PAY

Pay received by those employees who work on a legal holiday.

SECTION 14. IMMEDIATE FAMILY

Is defined as spouse, children, parents, brother, sister, grandfather, grandmother, and the employee's mother-in-law and father-in-law.

SECTION 15. PERSONNEL OFFICER

The City Manager or anyone he may appoint to act in his behalf.

SECTION 16. PROBATIONARY PERIOD

A test period in which the employee is required to demonstrate the capability to fulfill duties and demonstrate the ability to establish effective working relationships with fellow employees.

SECTION 17. PROMOTION

The movement from one class to another class having a higher maximum rate of pay. Such movement requires a new probationary period.

SECTION 18. PUBLIC SAFETY EMPLOYEES

All uniformed or sworn personnel of the City who are classified as safety members in the Public Employee's Retirement System.

SECTION 19. REINSTATEMENT

The restoration of an employee to a previous position after layoff, sick leave, suspension, or resignation.

SECTION 20. SALARY ADJUSTMENT

An adjustment in salary as a result of a wage and benefit study, classification study, etc.

SECTION 21. SENIORITY

The length of full-time continuous service with the City and then in a classification covered by a Memorandum of Understanding with an employee organization.

SECTION 22. SPECIAL ADJUSTMENT

A temporary increase in pay as a result of performing additional duties not normally required of an employee's classification. A Special Adjustment requires the approval of the Department/Agency head and the Personnel Director.

SECTION 23. SUSPENSION

The temporary removal from duty of an individual, with or without pay, for disciplinary reasons.

SECTION 24. TERMINATION

The leaving of City service by an employee due to death, discharge, layoff, resignation, retirement, or work completion.

SECTION 25. TRANSFER

The movement of an individual from one department to another while remaining in the same class with similar duties and responsibilities.

SECTION 26. UNIT

A grouping of classifications in accordance with Rule XXIV Section 1 (J), which may be represented by an employee organization/union on a formal or informal basis. The specific Unit grouping and its representative is found in Appendix A.

RULE II. GENERAL PROVISIONS

SECTION 1. FAIR EMPLOYMENT

No question in any test, application form, interview, or other personnel proceeding shall be so framed as to attempt to elicit information concerning race, color, ancestry, national origin, religious or political opinion or affiliation. Any appointment to or removal from city service shall not be affected by race, color, ancestry, national origin, political or religious beliefs. Neither the city nor any employee organization shall discriminate in any way against any city employee or applicant for city employment because of race, age, color, creed, religion, sex, national origin, or handicap. (See Appendix G for Affirmative Action Plan)

SECTION 2. VIOLATION OF RULES

Any violation of these rules shall be sufficient grounds for rejection, discharge, suspension or other disciplinary action as the Personnel Officer may consider appropriate.

SECTION 3. AMENDMENT OF RULES

These rules may be amended by the City Council in the manner prescribed for the amendment of other resolutions.

SECTION 4. EMPLOYEE RESPONSIBILITY

It shall be the responsibility of each employee to insure that personal information on the employee's personnel record is kept current.

SECTION 5. SENIORITY

Seniority shall be determined by the length of continuous full-time service within the city and then in a classification covered by a Memorandum of Understanding with an employee organization.

Seniority provisions in the Police Department shall be applicable only to those sworn personnel who have completed their probationary period.

Seniority shall be given serious consideration in shift assignment, days off, and choice of vacation days, if in the opinion of the administrative staff all other things are relatively equal.

Seniority shall be terminated by:

A. Resignation

B. Discharge for cause

C. Retirement

D. Failure to return to work from lay-off within seven (7) calendar days after notice to return by certified or registered mail or by telegram addressed to the employee and sent to the employee's last known address on file with the Personnel Department.

E. Absence from work for three (3) consecutive working days without notifying the city, except when the failure to notify and work is due to circumstances beyond the control of the employee. After such unexcused absence, the city shall send written notice to the employee at the employee's last know address stating the loss of seniority and termination of the employee's employment with the city.

SECTION 6. CONSISTENCY OF RULES

The management staff will consult with a committee established by the appropriate employee organization to review work rules to insure that all employees receive fair and equitable treatment.

RULE III. CLASSIFICATION

SECTION 1. PREPARATION OF PLAN

The Personnel Officer or designee shall determine and set forth the duties and responsibilities of each position in the city service. All positions which are substantially similar in function according to the class specifications shall be placed in the same class.

SECTION 2. REVISION AND REALLOCATION

The initial classes established in the classification plan may be amended, combined, or abolished and new classes set up by the Personnel Officer in accordance with these rules and regulations. In addition, any position may be reallocated to a different class and responsibilities of the position or for other sufficient causes. Any reclassification to a higher classification shall result in at least one incremental increase in salary.

The city will maintain a program of continual review of all job classifications making necessary revisions and reclassifications based on the findings.

The job description and classification for each position shall continue in effect unless and until:

A. the job content is substantially altered as to the requirements for training, skill, responsibility, effort and working conditions, or

B. the position is terminated

* (Unit 6 - Miscellaneous Services)

C. the classification will not be assigned to a different unit without reasonable notice.

SECTION 3. NEW POSITIONS

Any new position that is established must be in accordance with these rules and regulations and allocated to a particular class before it can be filled.

SECTION 4. NEW OR CHANGED CLASSIFICATIONS

When an existing position is substantially altered, the existing classification shall be processed in accordance with the following procedures:

A. The Personnel Department shall perform an evaluation of the position, develop a description, and assign the appropriate classification.

B. Job descriptions shall reflect the general details considered necessary to describe the principal functions or the job being described and shall not be construed as a detailed description of all the work requirements that may be inherent in the job.

* (Unit 6 - Miscellaneous Services)

C. The proposed job description, classification and wage rate for the proposed classification will be submitted to the Union.

SECTION 5. RECORDS

The Personnel Officer or designee shall maintain complete and accurate records showing the classes that have been established, the detailed specifications for each class, and the allocation of positions to classes.

SECTION 6. MISUSE OF CLASSIFICATION

Reclassification or reallocation of positions to classes shall not be used for the purpose of avoiding restrictions surrounding demotions or promotions.

SECTION 7. CLASSIFICATION REVIEW

* (Unit 5 - Technical/Professional Services, Unit 6 - Miscellaneous Services)

An employee may request a classification review of his/her position. Such request will be forwarded through the line of supervision on the appropriate form to the Personnel Director.

An employee shall not submit such a subsequent request prior to eighteen (18) months after completion of any previous classification review, unless the employee's position has undergone a considerable change in duties and responsibilities.

The employee shall be notified in writing of the classification review decision.

SECTION 8. CLASSIFICATION REVIEW APPEAL

* (Unit 5 - Technical/Professional Services, Unit 6 - Miscellaneous Services)

An employee may appeal the decision of a classification review no later than ten (10) working days after such results have been provided to the employee. Such an appeal shall be filed with the Personnel Office. Such an appeal shall include a detailed statement by the employee indicating his/her reasons for disagreement with

the classification review decision.

A designated individual in the Personnel Office shall hold a meeting with the employee no later than fourteen (14) working days after the classification review appeal filing. The designated individual shall not be the same person who conducted the initial classification review. This individual shall respond in writing to the employee no later than twenty-one (21) working days after the meeting with the employee.

If the employee is not satisfied with the decision from Personnel the employee may appeal the decision to the City Manager within ten (10) working days from Personnel's response. The City Manager shall review and respond to the appeal within ten (10) working days of such appeal. The City Manager's response shall be final.

Provisions within this section shall not be subject to the grievance procedures.

RULE IV. COMPENSATION

SECTION 1. PREPARATION OF PAY PLAN

The pay plan shall be prepared to cover all classes and positions within the City service. In determining the pay rates for the different classes, consideration shall be given to the City's financial condition, current costs of living, prevailing rates of pay for comparable work in public and private agencies, working conditions, fringe benefits, and any other relevant factors.

SECTION 2. ADOPTION OF PLAN

The pay plan shall be adopted and may be amended whenever necessary by action of the City Council. At the time of consideration, any interested party may appear and be heard. Amendments and revisions of the plan may be suggested to the City Council by any interested party and shall be submitted to the City Council through the City Manager.

SECTION 3. PAYROLL PERIODS

The City shall pay its employees every other Friday.

A. Pay periods will be Sunday through Saturday. Sundays and Saturdays should be treated the same as before if they had fallen on the 1st and 16th or 15th and 31st.

B. Daily time cards will be turned in to Finance the day following the work day. Pay period time cards will be due on July 13 and every other Monday thereafter.

SECTION 4. *SKILL COMPENSATION*

The following assignments are not considered permanent positions and are not a separate classification. These assignments are not subject to personnel selection procedures, appeals, or seniority as are permanent positions. Assignments are at the discretion of the Agency/Department head as provided, and are not a property right.

A. Bilingual Assignment

* (Unit 5 - Technical/Professional Services, Unit 6 - Miscellaneous Services)

Employees in positions designated by the department head which require employees, as a condition of employment, to perform bilingual translation as

a part of their regular duties, shall be entitled to bilingual differential pay. Such differential shall apply regardless of the total time required per day for such translation.

Such differential shall be twenty-five dollars ($25.00) per pay period. Employees in such positions must be certified as competent in translation skills by the Personnel Department to be eligible for compensation.

* (Unit 4 - Police, Unit 7 - Police Management/Sergeants only)

Positions in the Police Department which are determined to require bilingual abilities will be paid additional compensation. Each full-time employee who meets the eligibility requirements and designated by the Police Chief and Personnel to receive bilingual pay shall be compensated at the rate of $25 per pay period actually worked. Employees receiving bilingual pay must be certified through a proficiency test in bilingual abilities and currently assigned to the designated position. Eligibility will be determined as follows:

1. The Police Chief shall designate which employees should be assigned bilingual duties and which languages shall be eligible for bilingual pay.

2. The Personnel Department shall conduct a test of competency for employees whose positions have been assigned bilingual duties to certify these employees eligible for bilingual pay.

3. Competency will be determined by measuring the employee's fluency in Spanish as well as the ability to communicate in job-related situations.

B. Matron Duty

* (Unit 6 - Miscellaneous Services)

Police Records Clerks who are assigned and actually perform Matron Duty for a shift shall be eligible for additional pay at the rate of 1 1/2 of the employees' base salary per shift.

C. Paramedic Duty Assignment

* (Unit 2 - Fire)

Firefighter and Fire Engineer positions assigned to paramedic duty will receive additional compensation which shall be the amount of the difference between Step E of the Fire Engineer classification and the amount representing 12% (24 pay ranges) above Step E of the Fire Engineer classification except for probationary personnel who will receive 6% (12 pay ranges) until such time that they pass probation.

Fire Captain positions assigned to paramedic duty will receive a flat amount of $465 per month or the amount calculated for the Firefighter and Fire Engineer positions, whichever is greater.

D. Bomb Squad Assignment

* (Unit 2 - Fire)

Firefighter and Fire Engineer positions assigned to the Bomb Squad Unit will receive additional compensation which shall be the amount of the difference between Step E of the Fire Engineer classification and the amount representing 5% (10 pay ranges) above Step E of the Fire Engineer classification.

Fire Captain positions assigned to the Bomb Squad Unit will receive a flat amount of $179 per month or the amount calculated for the Firefighter and Fire Engineer positions, whichever is greater.

E. Hazardous Materials Assignment

* (Unit 2 - Fire)

Firefighter and Fire Engineer positions assigned to the Hazardous Materials Unit will receive additional compensation which shall be the amount of the difference between Step E of the Fire Engineer classification and the amount representing 5% (10 pay ranges) above Step E of the Fire Engineer classification.

Fire Captain positions assigned to the Hazardous Materials Unit will receive a flat amount of $179 per month or the amount calculated for the Firefighter and Fire Engineer positions, whichever is greater.

SECTION 5. CALL BACK/RECALL

Each time a non-safety employee who is not on standby duty is called away from home on emergency that employee shall be entitled to at least two hours pay or compensatory time. Any such call time over the 40 hour week is paid at the rate of time and one-half (1 1/2) for employees not on standby.

The full amount of time is computed to the nearest full hour. If the employee works under thirty minutes, the time is discounted but if the employee works over thirty minutes, the time payment is received for the full hour.

* (Unit 2 - Fire)

Off-duty employees who are recalled to a work site to perform recall work, regular or emergency, necessary to maintain staffing levels, or in response to a special detail assignment, such as fire investigation, will be granted a minimum of two (2) hours of recall work.

Recall work is defined as either "regular recall work" which is initiated for the purpose of maintaining staffing levels or "emergency recall work" which is initiated when it is deemed necessary or advisable to properly cope with an emergency incident(s).

Special detail work is defined as work performed by an assigned employee during off duty hours (i.e. special fire safety standby assignment, fire investigative response, or Oral Board member service.), other than for designated incentive or skill pay as designated in Rule IV, Section 4.

An employee on a twenty-four (24) hour shift schedule involved in recall or special detail work will be paid straight time at the regular rate of pay, unless the employee has worked more than 182 hours in the twenty-four (24) day work period at which time the employee will be paid at time and one-half (1 1/2) for all hours worked in excess of 182 hours at the regular rate of pay. An employee on a forty (40) hour work week schedule will be paid at time and one-half (1 1/2) for all hours worked in excess of the forty (40) hours in the work period as defined in the relevant overtime section. Travel time to work and returning home will not be counted as work time.

SECTION 6. MEALS DURING EMERGENCY WORK SITUATIONS

* (Unit 6 - Miscellaneous Services)

During emergency overtime situations which extend over a period of four hours, the City will make every effort to allow time for the meals. If the emergency conditions or the location of the work site prevent the employees from leaving the work site for an adequate period of time, then meals will be provided for the employees at City expense.

SECTION 7. STANDBY COMPENSATION

* (Unit 2 - Fire)

Employees required to standby for court time will be compensated in accordance with the following conditions and requirements.

A. Court Standby Time is time spent in the standby status, exclusive of the designated meal break when court adjourns for lunch.

B. Employees placed on Court Standby Time during their off-duty time who are so restricted as to exclude their ability to leave home or the court's vicinity, will be granted a minimum of two (2) hours Court Time. If the employee is placed on Court Standby Time on the day they are scheduled to return to duty, the guaranteed minimum time will apply only if there is at least a two (2) hour period between the time indicated on the subpoena and the time the person is required to report for duty.

C. Court Time is defined as work time required of an employee attending court in response to a subpoena, a coroner's inquest, or a hearing or trial in a civil or criminal case at a time other than the employee's assigned work shift schedule for the purpose of testifying as to knowledge acquired or claimed to have been acquired by such employee in the course of employment with the City. Verification documentation by the court will be required as certification of service.

D. Employees placed on Court Standby Time during their off-duty time are required to be accessible by telephone, or other methods approved by management during the designated standby time.

* (Unit 4 - Police)

A. For each subpoena received requiring an employee to standby at home for possible court appearance, but not requiring actual court appearances, the employee shall be entitled to accrue a flat two (2) hours of compensatory time except as modified by Item C below.

B. If the employee, on morning session standby, is not excused and is notified of a requirement for afternoon session standby, the employee shall be entitled to an additional two (2 hours) of compensatory time for the afternoon session except as modified by Item C below. In order to be eligible to receive the compensatory time for the afternoon session standby, it will be necessary for the employee to provide his supervisor with the name of the deputy district attorney requiring the afternoon standby.

C. If an employee has been on standby notice and subsequently is required to appear in court, the employee shall be entitled to receive only the pay for court appearance as provided under current policy for court appearance.

D. The City will provide the employee with the opportunity to utilize the accrued compensatory time within ninety (90) days of accumulation of each eight (8) hour block of compensatory time.

E. Every effort will be made to allow the compensatory time to be utilized in conjunction with the employee's regularly scheduled days off.

F. All usage of compensatory time shall continue to be made in accordance with the applicable provisions of the Personnel Rules and Regulations and the Administrative Manual.

* (Unit 5 - Technical/Professional Services)

A. For each subpoena received requiring an employee to standby at home for possible court appearance, but not requiring actual court appearances, the employee shall be entitled to accrue a flat two (2) hours of compensatory time except as modified by item C below.

B. If the employee, on morning session standby, is not excused and is notified of a requirement for afternoon session standby, the employee shall be entitled to an additional two (2) hours of compensatory time for the afternoon session except as modified by item C below. In order to be eligible to receive the compensatory time for the afternoon session standby, it will be necessary for the employee to provide his supervisor with the name of the attorney requiring the afternoon standby.

C. If an employee has been on standby notice and subsequently is required to appear in court, the employee shall be entitled to receive only the pay for court appearance as provided under current policy for court appearance.

D. Every effort will be made to allow the compensatory time to be utilized in conjunction with the employee's regularly scheduled days off.

E. All usage of compensatory time shall continue to be made in accordance with the applicable provisions of the Personnel Rules and Regulations and the Administrative Manual.

* (Unit 6 - Miscellaneous Services)

A. 1. Standby duty assignments shall be rotated annually among employees qualified to perform such duties.

2. Any person in a classification in pay range of Public Service Technician II or below, who in the opinion of the department head has sufficient knowledge to perform related duties is eligible to participate in the standby program provided they are qualified to do so.

3. The determination as to an employee's qualifications shall be made by the department head or authorized representative.

4. Employees on actual standby duty are required to respond to call-outs within a reasonable period of time, depending on the nature of any particular call-out problem. In order to assure a reasonable response

time, employees on actual standby duty are required to either carry a City-provided "beeper" or leave word with the Police Department Watch Commander where they can be reached by telephone when not at their place of residence.

Habitual failure to respond to call-out situations within a reasonable period of time, as determined by supervisory personnel, shall constitute grounds for disqualification from the standby program.

5. From those employees determined to be qualified and by seniority, a list of those employees qualified to perform standby duty shall be established. Those employees currently on the standby assignment shall be placed at the bottom of the list in accordance with their seniority, but behind less senior employees not on standby duty.

6. By seniority, each employee on the list shall have the opportunity to accept or decline standby duty. In the event the senior employees at the top of the list decline the standby assignment, their names shall be placed at the bottom of the list and the next senior employee shall be given the opportunity to accept or decline the assignment. This process shall be repeated until four (4) individuals have accepted the assignment.

7. In the event no employee on the list accepts the assignment, the department head, or authorized representative, may appoint employees on the list in order of the least senior individual first; or, an individual not eligible to be on the list, but determined to be qualified by the department head, may be appointed.

8. The individuals selected to serve on standby duty through the processes set forth above shall continue in the assignment for a period not to exceed one (1) calendar year; unless such individuals are reselected utilizing the procedures set forth above.

9. See Rule XIX Residence for additional conditions.

B. When four (4) individuals have been selected, their order in the weekly standby rotation shall be determined by "luck of the draw."

C. 1. In the event an individual serving in a standby capacity is unable to complete the one (1) year duty assignment the individuals name will be placed at the bottom of the list; the individual selected to replace that person will serve in the standby capacity for the remainder of the annual standby assignment period.

(a) An individual selected from the top of the list to complete seven (7) or more months of an annual standby assignment, will be

placed at the bottom of the list upon completion of the annual standby assignment period.

(b) An individual selected from the top of the list to complete five (5) or less months of an annual standby assignment will remain at the top of the list and will be eligible for a full one (1) year standby assignment.

D. 1. Any employee, who is directed or required to work standby, shall receive an equivalent of one salary range increase.

2. Any employee who is called back to work who is on standby, shall be paid at one-and-one-half (1 1/2) times the employee's normal hourly rate.

3. Any employee who is not on standby and is called back to work, will be guaranteed a minimum of two (2) hours pay at the time-and-one-half rate.

SECTION 8. OVERTIME COMPENSATION/NON-MANAGEMENT EMPLOYEES

The City reserves the right to schedule overtime work as required in a manner most advantageous to the City and consistent with the public interest and the requirement of municipal employment.

A. ASSIGNMENT OF OVERTIME

* (Unit 2 - Fire)

Vacation Relief Overtime

All employees are subject to Vacation Relief Overtime and to mandatory recall to provide staffing levels in accord with Fire Department overtime policies and procedures.

Assigned Overtime Vacation Relief

Assignment of overtime for vacation relief shall be in accord with Fire Department overtime policies and procedures.

Assignment of Overtime Staffing Shortages

Assignment of overtime for staffing shortages or for any other unpredictable vacancy shall be from the Overtime Recall List as directed by Fire Department overtime policies and procedures.

Emergency Recall

Emergency Recall will be in accordance with Fire Department Recall Policies and Procedures.

* (Unit 6 - Miscellaneous Services)

1. This section is applicable to overtime scheduled in advance and to emergency overtime as required to supplement employees on "standby" duty. It is understood that overtime assignments are made by classification within the department requiring the overtime.

2. The City reserves the right to schedule overtime work as required in a manner most advantageous to the City and consistent with the public interest and the requirements of municipal employment. The City further reserves the right to determine appropriate classification for overtime assignment, those qualified for assignment, and the ability to utilize employees within appropriate classifications from departments other than those requiring the overtime.

3. In the circumstances described in paragraph 1, overtime will be divided as equally as possible between all qualified employees within the affected classification and among those desiring to do the work.

4. In order to assure equal distribution of overtime, an overtime list will be established by classification within a department according to seniority. Annually the senior employee will be given the first opportunity for an overtime assignment. After the completion of an overtime assignment the senior employee will move to the bottom of the list and not be offered an overtime assignment until each employee in the affected classification has been offered an overtime assignment.

5. In the interest of effective and efficient operation of the City it is understood that it may be necessary to make exceptions to the rotation policy; however, it shall be the intent that each employee will have the opportunity to accept an amount of overtime work during the course of the fiscal year relatively equal in time to that accepted by other employees within the same classification and department.

6. As an example of an exception to the rotation policy, each employee on standby duty will be given a list of eligible employees available for emergency assistance. Each standby employee's list will vary to some extent providing the opportunity for each qualified employee to be available for emergency overtime depending upon which standby man is on duty. Because of the emergency nature of the work the standby employee shall be allowed to select anyone including other standby

employees when the requirement for assistance extends beyond the availability of appropriate employees on the list.

7. In the event no employee is willing to accept an overtime assignment, it will be assigned by reverse order of seniority within a classification. In subsequent cases of unaccepted overtime, the next lowest employee in seniority within the classification will be given the assignment with the intent being to divide equally all unaccepted overtime among affected employees.

B. OVERTIME RATE AND METHOD OF COMPENSATION AND ELIGIBILITY

1. Method of Compensation

Those employees eligible to receive overtime compensation may receive pay or may elect to receive compensatory time at a rate equivalent to overtime pay.

Compensatory time accruals will be restricted to no more than sixty (60) comp time hours (40 hours worked at time-and-one-half equals sixty (60) comp time hours).

* (Unit 2 - Fire)

(a) Compensatory Time may not be accrued for time worked.

(b) Non-shift safety personnel who receive credit of one hundred ninety three (193) hours per year, due to the past work week reduction of shift personnel, may use a maximum of forty (40) hours per year in the form of compensatory time off. The balance, or, the full one hundred ninety three (193) hours, will be paid out once a year in a lump sum at the employee's regular rate of pay at the rate earned.

(c) Any employee who changes classifications and who has accumulated any hours of Compensatory Time shall be paid for all such accumulated hours at the employee's regular rate of pay in effect for the former classification when such hours were incurred prior to such classification change.

2. Rate of Compensation

Overtime shall be paid at one-and-one-half (1 1/2) times the normal hourly rate.

* (Unit 2 - Fire)

24 hour work shift schedule employees whose work time exceeds 182 hours in the twenty-four (24) day work period shall be paid at one and one-half (1 1/2) times the employee's regular rate of pay for all hours in excess of 182 hours in the work period as defined in Rule XXVI, Section 1.

40 hour work week schedule employees whose work time exceeds forty (40) hours in the seven (7) day work period shall be paid at one and one-half (1 1/2) times the employee's regular rate of pay for all hours worked in excess of forty (40) hours in the work period as defined in Rule XXVI, Section 1.

All time worked which is beyond the employee work schedule, which is less than one (1) hour increments in a work shift, shall be compensated for in the following manner:

TIME	WORK TIME
0-10 minutes	-0-
11-20 minutes	1/4 hour
21-30 minutes	1/2 hour
31-50 minutes	3/4 hour
51-60 minutes	1 hour

* (Unit 4 - Police)

Overtime compensation shall be paid for all time worked or deemed to have been worked (including all paid leaves of absences) in excess of the employee's regularly scheduled daily shift or 40 hours per week.

* (Unit 5 - Technical/Professional Services, Unit 6 - Miscellaneous Services)

Overtime will be paid for over 40 hours in any one week or over the regularly scheduled hours within the day.

3. Eligibility for Compensation

* Unit 6 - Miscellaneous Services)

Those employees in the Street and Public Utilities Divisions are not entitled to overtime pay if they are called out or asked to work an extended day due to an emergency if it is their turn in the rotation for standby duty. Those employees who are not in their week of standby duty shall be given the same consideration as other employees in regard to overtime.

Management level employees shall not work regularly scheduled shifts to avoid the payment of overtime when a qualified employee is available to work. Management employees are not eligible for the provisions of this article.

SECTION 9. OVERTIME COMPENSATION/MANAGEMENT EMPLOYEES

A. SPECIFIED PROVISIONS

This overtime provision is intended to provide a fair and equitable method of handling compensation for substantial time required to meet the requirements of holidays, attention to duties outside the normal work schedule and such other needs approved or authorized for such entitlement by the City Manager.

Overtime for management personnel is defined as straight time compensation at the employee's regular hourly rate, unless otherwise stated. Such overtime, as defined in above paragraph may be compensated in cash or compensatory time, as determined by the Department Head, or identified in the following provisions.

For the purpose of administering this section, management personnel are considered to fall within the following categories by class:

1. Administrative Management:

Accounting Manager	Parks Director
Assistant Library Director	Purch/Cntrl Svcs Mgr.
Building Official	Recreation Director
City Engineer	Revenue Manager
City Planner	Risk Mgmt/Safety Off.
Deputy/Comm. Eco. Dev. Dir	Solid Waste Supt.
Equipment Fleet Supt	Street Maint. Supt.
Info/Telecom System Manager	Traffic Engineer
Museum Director	Utilities Supt.

Employees in this group may earn, accrue and use compensatory time and avail themselves of administrative leave as set forth in Article XV.

2. Supervisory Management: All classifications covered by Unit 3 - Management Group with the exception of the classifications considered "Administrative Management." Employees in this group may earn, accrue, and use compensatory time and administrative leave the same as "Administrative Management" and may, in addition, earn overtime.

Overtime pay as means of compensation shall be limited to Supervisory Management. It shall not be encouraged by department/agency heads and is limited to those situations in undesirable effect upon the effectiveness and/or efficiency of the department's operation. Overtime pay at the employee's regular straight time hourly rate may be granted under special, unusual, or emergency situations. Each request for overtime pay will stand on its own merit and will require the written justification of the department and/or agency head and the specific approval of the City Manager.

Police Management: All classifications covered by Unit 7 - Police Management Group.

1. Police Lieutenants and Sergeants may be granted overtime for all emergency situations which may arise and involve a callout situation which would be in addition to a regularly scheduled tour of duty.

2. Police Lieutenants and Sergeants may be granted overtime for all court time required by official subpoena.

3. Police Lieutenants and Police Sergeants will receive premium overtime compensation, at the rate of one and one-half (1 1/2) times the employee's base compensation, in cash or compensatory time off, at the option of the employee, for all time worked in excess of forty (40) hours per week that is currently being paid at straight time, and is not being compensated by the Compensatory Time Dollar Bank provided in the following section under Unit 7 - Police Management 3 (e).

Overtime pay as means of compensation shall be limited and not encouraged by department/agency heads and is limited to those situations in which compensatory time or administrative leave is not practical and/or would have an undesirable effect upon the effectiveness and/or efficiency of the department's operation.

Overtime pay at the employee's regular straight time hourly rate may be granted under special, unusual, or emergency situations. Each request for overtime pay will stand on its own merit and will require the written justification of the department head and the specific approval of the City Manager.

B. COMPENSATORY TIME

Compensatory time is defined as time off work provided to an employee in lieu of overtime pay and is time that may be accrued.

Compensatory time may only be earned by unusual work situations requiring substantial attention to duties outside the normal work schedule as may be approved for such entitlement by the City Manager as the result of unusual or special work conditions.

This provision is intended to provide a fair and equitable method of handling compensation for substantial time required to meet emergency an/or storm responses, unusual scheduling required to meet the requirements of holidays, and such other needs approved or authorized by the City Manager.

1. Employees will use compensatory time within the fiscal year in which it is earned. However, an employee may retain a balance of unused compensatory time to the amount of forty (40) hours per year.

2. Upon termination or retirement from the City, the employee will receive credit for any unused compensatory time that has been accrued.

3. The earning and accrual of compensatory time requires the approval of the Department/Agency Head.

4. Compensatory time shall not be provided for the following situations:

   A. Meetings of the City Council or any City Commission requiring attendance. Such meetings are considered a part of the normal duties of the position.

   B. Attending meetings such as professional association meetings or speaking engagements.

   C. Working time beyond the normal work day necessary for efficient and effective departmental operations or for the purpose of maintaining good public relations. Any such time shall be considered a part of the normal duties of the position.

5. Any compensatory time accrued during a work week period may be offset by adjustment in subsequent working hours the following week.

* (Unit 7 - Police Management)

1. Compensatory time may be earned for attendance at special meetings of the City Council and City commissions except when such meetings are a) held in lieu of regularly scheduled meeting, or b) when such meetings are called and/or scheduled as part of the annual budget review process.

2. Police Lieutenants and Sergeants may earn compensatory time for staff meetings convened by the Chief of Police or Bureau Commander

after their normal work hours for the purpose of furthering efficient administration of the Police Department.

3. Compensatory time may also be earned for required attendance at meetings, special and/or unusual work situations with the following exclusions:

   (a) Bureau Captains: Monthly weekend Administrative Officer duty assignments, including an approximate two-hour inspection tour of the department and City when possible.

   (b) Uniform/Administrative Bureau Lieutenants and Sergeants: Shift preparation time or periodic hourly shift relief time where they are reasonable and necessary in order to properly administer and organize the efficient operation of the respective shift as well as significant periods to time spent at the conclusion of a tour of duty which becomes necessary to properly supervise or administer police activities.

   (c) Service Bureau Sergeants: Meetings after normal working hours.

   (d) Investigations Bureau Sergeants: Significant periods of time spent at the conclusion of tour of duty which becomes necessary to properly supervise or administer police activities as well as any weekend or holiday call of an advisory nature.

   (e) Compensation for categories a through d will be made via a yearly dollar-bank established by using Step E (hourly rate of a Sergeant's pay scale times sixteen (16) Sergeants (nineteen (19) Sergeants effective 7/1/91) times ten (10) hours times twelve (12) months. The dollar-bank monies will then be paid out once per year to each staff member equally on the second payroll period in June.

In all instances of compensatory time, administrative leave and/or overtime, the first and foremost consideration in the administration of this policy shall be the effective and efficient operation of the City Government and its respective departments as well as the specific departmental operations that may be affected.

The City Manager may, under rare circumstances, and upon the specific written justification and recommendation of the Department Head or Agency Head, grant exceptions to this policy.

C. APPLICATION FOR COMPENSATORY TIME LEAVE

1. Application shall be made through normal channels and shall be governed by the procedures set forth in Section 9.

2. Compensatory time should be applied for when a leave of extended duration is desired such as an absence in excess of two successive working days.

SECTION 10. COURT APPEARANCES COMPENSATION

* (Unit 4 - Police, Unit 5 - Technical/Professional Services)

Any employee who makes a court appearance as part of his/her duties on his/her off-duty time shall be reimbursed for the actual time in court; however, the employee shall receive a minimum of two (2) hours time for a morning appearance and two (2) hours time for an afternoon appearance.

* (Unit 4 - Police)

A. For any court appearance outside the City of Ontario where an officer is required to remain over the lunch hours, he shall be entitled to one mean not to exceed $3.50 in cost.

B. Any officer who is required to work on his day off may elect to have another day off or receive pay for that day.

C. For any court appearance outside the City of Ontario, a City vehicle will be made available whenever possible and shall be utilized by the officer. If the officer must utilize a private vehicle, he will be reimbursed for his actual mileage according to the rates set forth in Section I-3-2 of the Administrative Manual for the use of private vehicles.

SECTION 11. OUT-OF-CITY DUTY COMPENSATION

* (Unit 4 - Police)

A. When an officer is assigned out of the City on mutual aid he/she shall be entitled to a minimum of eight (8) hours pay or up to a maximum of twelve (12) hours pay for every twenty-four (24) hours he/she is required to be absent from the City. The amount of time earned shall be dependent upon the actual amount of time the officer is on duty and not in a standby status. Such time shall be computed from the time the officer leaves Ontario Police Headquarters until he/she returns to Ontario Police Headquarters. All meals and lodging will be furnished.

B. When the officer returns, the officer in charge shall submit a detailed report of all activities and how the officer's time was allocated; i.e., travel, standby duty, or other status.

SECTION 12. SHIFT DIFFERENTIAL COMPENSATION

* (Unit 6 - Miscellaneous Services)

When the majority of the employee's regularly scheduled shift hours occur before 7:00 AM and after 5:30 PM, the employee will receive a shift differential of thirty-five cents (35) per hour for all hours worked, in addition to the regular rate of pay.

Shift differential shall not be paid for any hours worked as overtime unless the employee qualifies as provided in this section.

RULE V. APPLICATIONS AND APPLICANTS

SECTION 1. ANNOUNCEMENTS

When an examination is to be given for any position in the city service, the Personnel Officer shall have notice given by posting announcements in City Hall, official bulletin boards, and other public places. The City Manager may also advertise by any other methods he deems advisable.

Announcements shall contain information as to the title of the position, duties and responsibilities of the position, remuneration for the position, the degree of training and experience required, the manner of making application, and any other information that may be pertinent.

SECTION 2. APPLICATION FORMS

Applications shall be on forms provided by the Personnel Department. These forms shall require information as to training, experience, citizenship, references, and other pertinent information. All applications must be signed by the person making application.

SECTION 3. ACCEPTANCE OF APPLICATIONS

Any qualified person shall be admitted to examination who, within the period prescribed in the public notices thereof, has filed an application upon the forms furnished by the Personnel Department, and whose application has not been rejected for cause in accordance with these rules, and who presents himself at the time and place designated for the examination.

SECTION 4. REJECTION OF APPLICANT

The Personnel Officer shall reject any applicant who:

A. Clearly fails to meet required minimum qualifications for the position.

B. Is not a citizen of the United States, where citizenship is required by State law.

C. Is physically incapable of fulfilling the duties as determined by a physician.

D. Makes any false statement of a material fact.

E. Has practiced any fraud or deception in the making of the application.

F. Cannot prove legal residence within the United States, if the applicant is not a citizen.

SECTION 5. NOTICE OF REJECTION

Whenever any application is rejected, written notice shall be mailed to the applicant. Incomplete applications may be returned to the applicant to be amended if the time limit for accepting applications has not expired.

RULE VI. EXAMINATIONS

SECTION 1. NATURE AND TYPES OF EXAMINATION

The selection techniques used in the examination process shall be impartial, of a practical nature, and shall relate to those subjects which fairly measure the relative capacities of the individuals examined. Examinations may be assembled or unassembled, may consist of written, oral, or performance tests or any combination thereof. Physical tests, medical tests, and investigations and evaluations of training, experience, services, character, and personal traits may be included as a part of any examination.

SECTION 2. CONDUCT OF EXAMINATIONS

The City Council may contract with a competent agency to administer the tests or the Personnel Officer may make the necessary arrangements with competent sources.

SECTION 3. PROMOTIONAL EXAMINATIONS

A promotional examination may be given whenever the Personnel Officer feels one is advisable or upon the request of a department head. These tests may consist of any of the selection techniques set forth in Section l of this rule. Only permanent or probationary employees who meet the qualifications set forth in the announcement are eligible to compete in a promotional examination.

SECTION 4. SCORING THE EXAMINATION

An applicant's grade upon a test is determined by weighing the score achieved in each part as set forth in the examination announcement and then computing the average. Failure in one part of the examination may be grounds for declaring the applicant as failing in the entire examination or as disqualified for subsequent parts of the examination.

SECTION 5. NOTIFICATION OF RESULTS

Each candidate in an examination shall be given written notice of the results thereof and if successful, the final earned rating and/or relative position on the employment list.

RULE VII. EMPLOYMENT LISTS

SECTION 1. EMPLOYMENT LISTS

As soon as possible after the completion of an examination, the Personnel Department shall prepare an employment list for the position tested. This list shall consist of applicants grouped relative to the scores they received in the total examination process.

SECTION 2. DURATION AND EFFECTIVE DATES OF THE LISTS

The list shall become effective by the pronouncement of the Personnel Officer that it is complete and available for selection. This list is to remain in effect for one year unless rescinded or extended by the City Manager.

Probationary and permanent employees who have been laid off will have their names placed on a re-employment list for one year. Names on this list shall be ranked in accordance with Rule XIII, Section 2 Layoff Procedure.

SECTION 3. REMOVAL OF NAMES FROM LIST

The name of a person appearing on an eligible or promotional list shall be removed upon written notice from the individual, failure to respond to a written notice of certification, or for any of the reasons set forth in Rule V, Section 4. The individual concerned shall be notified in writing of the action taken, mailed to the last known address. Any person on a promotional list who resigns from city service shall automatically have his/her name removed from the list.

SECTION 4. PROMOTIONAL LISTS FOR THOSE ON MILITARY LEAVE OF ABSENCE

The rights of any individual who enters, or entered, the armed forces of the United States or of this State, on or before the adoption of the National Selective Service Act in 1940, whether on annual or extended military leave, and whose name appears, or appeared, on a promotional list at the time he enters, or entered, such armed forces, shall not be prejudiced as a result of having been absent from the city in the armed forces. This section will be subject to the limitations expressed in Section 2 of this rule.

RULE VIII. METHOD OF FILLING VACANCIES

SECTION 1. GENERAL PROVISION

All vacancies in the city service shall be filled by transfer, demotion, promotion, reemployment, reinstatement, or from eligibles certified by the Personnel Department from an appropriate list.

SECTION 2. NOTICE OF VACANCY

Whenever a vacancy occurs in the city service, the department head shall notify the Personnel Officer by submitting a completed Personnel Request Form (Appendix B). The Personnel Officer shall decide in what manner the vacancy is to be filled from those listed in Section 1 of this rule.

SECTION 3. CERTIFICATION OF ELIGIBLES

If it is deemed in the best interest of the city to appoint from a list of eligibles, then the Personnel Officer shall certify from the specified list the names of all individuals willing to accept employment.

In the event there are fewer than three names on the list willing to accept appointment, the appointing authority may make an appointment from among such eligibles or request the Personnel Officer to establish a new list. If there are insufficient available eligibles on a promotional list, enough available eligibles shall be certified simultaneously from the promotional and eligible lists to insure that the number of available eligibles shall exceed by two the number of vacancies to be filled.

SECTION 4. APPOINTMENT PROCEDURE

From the list of eligibles certified and submitted to the department head, the department head will make a selection which must then be approved by the City Manager. If the person selected then presents himself or herself to the Personnel Office within the prescribed time, he or she shall be deemed to be appointed; otherwise,the individual shall be deemed to have declined the appointment.

SECTION 5. PROVISIONAL APPOINTMENTS

In the event there is a lack of qualified eligibles for a position, the City Manager may approve the provisional appointment of a person meeting the minimum qualifications of the position until a list of available eligibles is established. No credit shall be given

for any service under a provisional appointment toward the establishment of a new list or in the giving of any examination.

SECTION 6. TEMPORARY PROMOTIONS

Only management personnel are authorized to assign employees to perform duties associated with a higher classification. Such assignments will be confirmed in writing by the manager making the assignment, and notification will be provided to the Personnel Department.

* (Unit 2 - Fire)

Any employee who works more than 12 consecutive hours in a higher classification shall receive an approximate 5% salary increase while the employee continues to work in the higher classification. Only hours worked in higher classifications that are required by the department shall be counted toward meeting this requirement. After an employee has qualified in accordance with this provision, the employee will not be required to re-establish eligibility in the qualified classification thereafter.

* (Unit 5 - Technical/Professional Services)

Any employee, who temporarily performs the duties of a position in a higher classification for eighty (80) consecutive hours, shall continue to receive his normal rate of pay. Any subsequent work performed by the employee in the higher classification shall entitle the employee to be paid at the normal rate of pay for that classification while performing such duties with three exceptions:

A. If substantial time has elapsed since the employee last performed the work of the higher classification, the supervisor may require a performance test not to exceed a normal day's work at the employee's normal rate of pay.

B. In the instances where new equipment or new operational procedures are involved, the supervisor may require a training period not to exceed sixteen (16) hours at the employee's normal rate of pay.

C. In those instances where training is not involved and, if in the supervisor's opinion an employee is proficient in the higher classification, management has the authority to pay that employee at the higher classification pay rate.

The effective date of the temporary promotion shall be the beginning of the pay period following the one consecutive pay period.

The temporary promotion will remain in effect until the City no longer requires the incumbent to perform the duties of such assignment.

At the end of such assignment the employee performing the temporary assignment shall return to his/her original position and salary range.

* (Unit 6 - Miscellaneous Services)

Any employee who temporarily performs the duties of a position in a higher classification for eighty (80) cumulative hours, shall continue to receive his normal rate of pay. Any subsequent work performed by the employee in the higher classification shall entitle the employee to receive a one (1) step increase in pay, unless the rate of pay for the classification is lower, in which case the employee would receive the maximum rate of pay for that classification while performing such duties with three exceptions.

A. If substantial time has elapsed since the employee last performed the work of the higher classification, the supervisor may require a performance test not to exceed a normal day's work at the employee's normal rate of pay.

B. In the instances where new equipment or new operational procedures are involved, the supervisor may require a training period not to exceed sixteen (16) hours at the employee's normal rate of pay.

C. In those instances where training is not involved and, if in the supervisor's opinion an employee is proficient in the higher classification, management has the authority to pay that employee at the higher classification pay rate.

The effective date of the temporary promotion shall be the beginning of the pay period following the one consecutive pay period.

The temporary promotion will remain in effect until the City no longer requires the incumbent to perform the duties of such assignment.

At the end of such assignment the employee performing the temporary assignment shall return to his/her original position and salary range.

SECTION 7. POLICE CADET APPOINTMENT TO POLICE OFFICER

If the Personnel Rules and Regulations have been complied with, and a Cadet has successfully passed the examination for Police Officer before appointment as a Cadet, the Cadet is then eligible for appointment as a Police Officer without further testing.

RULE IX. PROBATIONARY PERIOD

SECTION 1. OBJECTIVE

The probationary period is to be regarded as an integral part of the testing procedures and shall be utilized for closely observing the employee's work and his/her adjustment within the organization.

SECTION 2. LENGTH

All original and promotional appointments shall be tentative and with a probationary period. The department head shall submit a performance evaluation report as to the quality of service of the probationer, and whether the probationer is to be retained as a permanent employee. The probationary period is not complete until permanent status is recommended by the department head and approved by the City Manager.

The probationary period shall be actual service of not less than twelve (12) months of actual service for safety employees and six (6) months of actual service for all other probationary employees.

SECTION 3. REJECTION

During the probationary period, an employee may be terminated by the department head without cause and without right of appeal. Notification of rejection in writing shall be served on the probationary employee along with a performance evaluation and copies of both will be filed in the Personnel Office two (2) weeks before the effective date of the rejection. The affected employee may request a meeting with the department head to discuss the reasons for rejection prior to the effective date of the rejection.

An employee who is rejected while serving probationary period after promotion, may be returned to his/her former position if the department head feels he/she is incapable of fulfilling his/her new duties after a reasonable period of time.

RULE X. LEAVES OF ABSENCE

SECTION 1. LEAVES OF ABSENCE WITHOUT PAY

The City Manager shall have power to grant leaves of absence without pay for periods up to six months. During these periods, no vacation or sick leave benefits shall accrue.

An employee on an approved leave of absence without pay may continue medical insurance coverage by paying the full cost to the City in advance for each month, or portion thereof, depending on eligibility

** Also see Anniversary Date

SECTION 2. VACATION LEAVE

A. ELIGIBILITY

The granting of leaves is governed by the considerations presented below:

1. Upon satisfactory completion of six months service, the employee will be credited with the number of vacation days accrued.

2. Employees may use earned vacation leave after six months service.

3. Any leave of absence over thirty (30) days duration due to a combination of compensatory time and vacation leave must be approved by the City Manager.

4. Vacation periods during the calendar year shall be determined by the department head with due regard for both the wishes of the employee and the needs of the department.

5. Holidays occurring during a vacation shall not be counted as a day of vacation and the vacation leave shall be extended accordingly.

6. Any firefighter or police officer who has successfully completed six months service may be permitted to take a vacation. In the event that a firefighter does not complete his/her probationary period, any time granted as vacation shall be deducted from the individuals final pay received from the City.

7. Permanent part-time employees: Those employees who work half-time or more shall be entitled to a vacation period according to their normal work schedule and in accordance with their base pay.

B. CARRY-OVER

In order to encourage employees to take vacation time in a regular and timely manner, vacation time accrued should be used during the following year after it has been earned. Any carry-over of vacation time shall be with the approval of the Agency/Department head concerned.

* (Unit 3-Management Group, Unit 7-Police Management Unit, Unit 12 - Fire Management Unit)

Vacation leave taken during the following year after it has been earned allows a maximum of twice the annual accrual if all vacation leave earned in one year is used by the final month of the second year.

In accordance with this rule Agency/Department heads will make every effort to schedule vacation leave usage to prevent accruals beyond twice the annual accrual amount.

In order that an employee will not lose accrued vacation time because an Agency/Department is unable to allow vacation usage so that the employee may comply with this section, the Agency/Department head shall arrange vacation usage mutually beneficial to the employee and the Agency/Department.

* (Unit 2 - Fire)

The maximum amount of vacation time that can be carried over from year-to-year will be 336 hours.

C. RATE OF ACCRUAL

* (Unit 2 - Fire)

Shift Personnel

Years Completed	Vacation Earned
1-4	6-24 hour shifts
5-9	8-24 hour shifts
10-14	10-24 hour shifts
15-19	11-24 hour shifts
20-24	12-24 hour shifts
25-29	13-24 hour shifts
30+	14-24 hour shifts

Non-Shift Personnel

Years Completed	Vacation Earned
1-3	14 working days
4	15 working days
5-9	16 working days
10-14	21 working days
15-19	22 working days
20-24	23 working days
25-29	24 working days
30+	25 working days

* (Unit 3-Management Group, Unit 7-Police Management Unit)

Years Completed	Vacation Earned
1-3	14 working days
4	15 working days
5-9	16 working days
10	17 working days
11	18 working days
12	19 working days
13	20 working days
14	21 working days
15	22 working days

* (Unit 4 - Police)

Years Completed	Vacation Earned
1-5	12 working days
6	13 working days
7	14 working days
8	15 working days
9	16 working days
10	17 working days
11	18 working days
12	19 working days
13	20 working days
14	21 working days

* (Unit 5 - Technical/Professional Services, Confidential Employees)

Employees hired before July 1, 1983

Years Completed	Vacation Earned
1-3	14 working days
4	15 working days
5-6	16 working days
7	16 working days
8	17 working days
9	18 working days
10-11	19 working days
12-13	20 working days
14	21 working days
15	22 working days

Employees hired on July 1, 1983 and thereafter

Years Completed	Vacation Earned
1	10 working days
2	11 working days
3	12 working days
4	13 working days
5	14 working days
7	16 working days
8	17 working days
9	18 working days
10-11	19 working days
12-13	20 working days
14	21 working days
15	22 working days

* (Unit 6 - Miscellaneous Services)

Employees hired before July 1, 1985

Years Completed	Vacation Earned
1-3	13 working days
4	14 working days
5	15 working days
6	16 working days
7	16 working days
8	17 working days

9	18 working days
10-11	19 working days
12-13	20 working days
14	21 working days
15	22 working days

Employees hired on July 1, 1985 and thereafter

Years Completed	Vacation Earned
1	10 working days
2	11 working days
3	12 working days
4	13 working days
5	14 working days
6	15 working days
7	16 working days
8	17 working days
9	18 working days
10-11	19 working days
12-13	20 working days
14	21 working days
15	22 working days

* (Unit 12 - Fire Management Unit)

Shift Personnel

Years Completed	Vacation Earned
1-3	7-24 hour shifts
4	7.5-24 hour shifts
5-9	8-24 hour shifts
10	8.5-24 hour shifts
11	9-24 hour shifts
12	9.5-24 hour shifts
13	10-24 hour shifts
14	10.5-24 hour shifts
15	11-24 hour shifts
16	12-24 hour shifts

Non-Shift Personnel

Years Completed	Vacation Earned
1-3	14 working days
4	15 working days
5-9	16 working days
10	17 working days
11	18 working days
12	19 working days
13	20 working days
14	21 working days
15	22 working days
16	24 working days

SECTION 3. SICK LEAVE

A. A City employee is entitled to sick leave for:

1. Any bona fide illness or injury.

2. Quarantine due to exposure to contagious disease.

3. Any treatment or examination including, but not limited to, medical, dental, ocular.

4. Death in the immediate family.

B. A City employee is not entitled to sick leave for illness or injury arising out of employment, other than employment for the City, for monetary gain or other compensations, or by reason of engaging in business or activity for monetary gain or other compensation.

C. Employees accrue sick leave at the rate of one (1) day per month or twelve (12) working days per year. (Fire Department Shift employees excluded, see J).

D. During the first six (6) months of service, sick leave and vacation time may be used for injuries occurring on duty, bona fide personal injury or illness. If an employee does not complete the probationary period, any wages advanced to the employee to cover sick leave shall be deducted from the final pay check. Upon satisfactory completion of six (6) months service, an employee shall be credited with earned sick and vacation leave less any days that may have been used for an illness or injury during the first six months of service.

E. Part-time permanent employees who work half time or more shall be entitled to sick leave prorated according to their normal work schedule and in accordance with their base pay.

F. There shall be no limit on the amount of sick leave that may be accrued by a permanent employee.

G. Sick leave shall not be taken as vacation time or compensated for in money at any time, unless provided for otherwise.

H. When an employee has been on sick leave, the City reserves the right to make any investigation of the illness it deems necessary, even to the requiring of a doctor's certificate. On the first day of illness, the employee must notify the department before the end of the first hour after the shift begins if the employee is to receive sick leave credit.

I. All determinations of sick leave shall be made by the department head concerned subject to the approval of the Personnel Officer.

J. Fire Department shift employees are given credit for twelve (12) hours sick leave each month. If an employee is absent for a 24-hour duty period, the employee is charged with using 24 hours of sick leave credit.

SECTION 4. BEREAVEMENT LEAVE

A. In the event of a death in the employee's immediate family, the employee shall be granted three (3) days paid bereavement leave at no charge to the employee. Shift employees in Unit 2 - Fire will be granted two shifts paid bereavement leave. Non shift employees will be granted three (3) days paid bereavement leave. Such bereavement leave shall be charged against the employee's sick leave, vacation or accrued compensatory time. Unit 12 - Fire Management Unit shift employees will be granted two shifts paid bereavement leave. Non shift employees will be granted three (3) days paid bereavement leave. Such leave will be at no charge.

B. A maximum of five days paid bereavement leave shall be granted if there is a death in the immediate family outside the State boundaries at no charge. A Unit 2 Fire shift employee will be granted two shifts paid bereavement leave with a maximum of three shifts if the death in the immediate family is outside the State boundaries. Such leave will be charged against sick leave, vacation, or accrued compensatory time. Unit 12 - Fire Management Unit shift employees will be granted two (2) shifts paid bereavement leave with a maximum of three (3) shifts if the death in the immediate family is outside the state boundaries. Non shift employees will be granted five (5) days paid bereavement leave if the death in the immediate family is outside the state boundaries. Such leave will be at no charge to the employee.

C. The employee shall be granted one day paid personal leave to attend the funeral of a close relative not in the employee's immediate family. A Unit 2 - Fire shift employee will be granted one shift.

D. City employees may be excused by department heads to attend the funeral of deceased City employees without loss of pay.

E. The employee may be required to furnish evidence satisfactory to the City of the family member's death and the employee's relationship to the deceased family member.

F. Any time used for bereavement shall not be charged as personal leave time except for Unit 6 - Miscellaneous Services employees as provided in G.

* (Unit 6 - Miscellaneous Services)

G. In the event the employee requires additional time, two (2) days of sick leave and one (l) day of personal leave may be utilized for bereavement leave provided the employee has sufficient sick leave available. If the employee has no sick leave available, the additional two days shall be taken without pay, or charged against the employee's vacation time.

SECTION 5. INDUSTRIAL INJURY LEAVE

A. An employee injured in the line of duty will be compensated by the City of Ontario self-insured worker's compensation insurance fund after an absence of three (3) days. The doctor selected by the City or the employees designated physician must file a First Report of Work Injury with the City of Ontario.

B. Non Public Safety employees, when injured in the line of duty, may elect to use accumulated vacation, sick leave, or compensatory time to receive their normal salary. Payments from the City of Ontario self-insured worker's compensation fund must be turned over to the City if the employee elects to use vacation or sick leave.

C. Public safety employees when injured in the line of duty, shall be placed on paid medical leave of absence not to exceed one year from date of injury in accordance with Article 7, Section 4850 of the Labor Code until the injury is determined to be in the line of duty by the City of Ontario self-insured worker's compensation insurance fund, the injured employee may elect to use compensatory time, vacation, or sick leave. If the injury is determined to be in the line of duty, all vacation, sick leave, and compensatory time credits used will be restored.

D. Whenever an employee has been given a permanent and stationary rating by the Division of Workers Compensation of the State of California, return to the job must be based on the same medical information which the employee used in order to obtain the award. Unless these medical facts are very carefully considered, subsequent injuries or aggravations of the original injury can occur.

It is the policy of the City that employee returns to duties the employee can perform safely without undue risk of further injury to himself/herself or other employees. Should the employee be unwilling to accept a position offered by the City which he or she is physically and otherwise qualified to perform, the employee's employment will be terminated.

The medical criteria presented to the Division of Workers Compensation by the employee and his or her doctor shall be obtained and utilized by the City and interpreted in terms of specific job restrictions and limitations. The department head, Personnel Director and the Risk Management/Safety Officer shall then interpret and apply such job restrictions and limitations to the specific physical requirements of the employee's position and make a recommendation to the City Manager. A determination shall be made by the City Manager as to whether or not the employee shall:

1. Return to the job.

2. Transfer to some other position for which the employee is qualified based upon physical ability and experience.

3. Terminate employment with the City.

SECTION 6. MODIFIED DUTY

* (Unit 6 - Miscellaneous Services)

The City will endeavor to provide modified duty for employees who have sustained an injury on the job. Such modified duty is contingent upon availability and will be subject to the following consideration:

A. The treating, or consulting, doctor assigned in accordance with the Worker's Compensation Laws, will determine the employee's capability to perform modified duty. The responsibility for such determination shall rest solely with one or all of these doctors.

B. When modified duty is determined not to be available within the Department the injured employee normally works, the employee may be assigned modified duty within another department.

SECTION 7. MILITARY LEAVE

A. Officers and Employees of the City who are members of a state or federal reserve military unit shall be entitled to absent themselves from their duties or service with the City while engaged in the performance of ordered military duty, and while going to or returning from such duty in accordance with the laws of the State of California.

B. Employees are entitled to thirty (30) calendar days paid military leave in any one fiscal year provided they have been employed by the City for one year prior to this leave. Employees with less than one year's service must use accrued annual leave or compensatory time if they wish to receive their normal pay. This provision does not apply to regular drills at local stations.

C. Employees who are called or volunteer for service with the armed forces of the United States shall be entitled to reinstatement to their former positions. Upon application for reinstatement, the individual must display a certificate showing service was other than dishonorable. However, any individual possessing the right of reinstatement automatically forfeits these rights upon voluntary enlistment for a second term.

D. Any employee returning from service with the armed forces shall be entitled to such length of service seniority as would have been credited to the employee if he or she remained for that period of time with the City.

E. An employee who was in a probationary period at the time of leaving shall, upon return, complete the remaining portion of the probationary period according to the present rules and regulations.

F. An employee temporarily promoted to fill a vacancy created by a person serving in the armed forces shall hold such position subject to the return of the veteran. The employee affected by the return shall be restored to his or her former position or one of a similar nature while the returning employee resumes the position held previously.

SECTION 8. JURY AND COURT LEAVE

A. Employees of the City who are called or required to serve as trial jurors may absent themselves from their duties with the City during the period of such service or while necessarily being present in court as a result of such call. Permanent/probationary employees on jury duty will continue to receive their normal pay. Any individual called for jury duty in Ontario must return to work if dismissed before 3:00 p.m. If the individual is called to San Bernardino, he or she must return to work if dismissed by 2:00 p.m. Upon return from jury duty, the employee shall present a certificate of service to his/her Department.

B. An employee required to appear before a court for other than jury duty or in the line of duty will receive the necessary time as paid personal leave.

SECTION 9. HOLIDAYS

A. DAYS OBSERVED

1. All permanent employees except as identified in (2), (3) and (4):

- New Years Day - January 1
- Martin Luther King's Birthday - 3rd Monday in January
- Washington's Birthday - 3rd Monday in February
- Memorial Day - Last Monday in May
- Independence Day - July 4
- Labor Day - 1st Monday in September
- Columbus Day - 2nd Monday in October
- Veteran's Day - November 11
- Thanksgiving Day - 4th Thursday in November
- Day After Thanksgiving Day - 4th Friday in November
- Christmas Eve (1/2 day) - December 24
- Christmas Day - December 25
- New Years Eve (1/2 day) - December 31

2. Unit 2 - Fire Only:

- New Years Day - January 1
- Martin Luther King's Birthday - 3rd Mon. in January
- Washington's Birthday - 3rd Monday in February
- Lincoln's Birthday - February 12
- Memorial Day - Last Monday in May
- Independence Day - July 4
- Labor Day - 1st Monday in September
- Admission Day - September 9
- Columbus Day - 2nd Monday in October
- Statewide Election Day - 1st Tuesday after the Monday in November every even year.
- Veteran's Day - November 11
- Thanksgiving Day - 4th Thursday in November
- Day After Thanksgiving Day - 4th Friday in November
- Christmas Eve (1/2 day) - December 24
- Christmas Day - December 25
- New Years Eve (1/2 day) - December 31
- Every day designated by the President of the United States or by the Governor of the State of California. Any special holiday called by the President or Governor of the State of California. Any special holiday or designated day called by the President or Governor shall be paid on a one-time only basis.

3. Unit 4 - Police Only:

- New Years Day - January 1
- Martin Luther King's Birthday - 3rd Monday in January
- Washington's Birthday - 3rd Monday in February
- Lincoln's Birthday - February 12
- Memorial Day - Last Monday in May
- Independence Day - July 4
- Labor Day - 1st Monday in September
- Admission Day - September 9
- Columbus Day - 2nd Monday in October
- Veteran's Day - November 11
- Thanksgiving Day - 4th Thursday in November
- Day After Thanksgiving Day - 4th Friday in November
- Christmas Eve (1/2 day) - December 24
- Christmas Day - December 25
- New Years Eve (1/2 day) - December 31

4. Unit 7 - Police Management Unit Only:

- New Years Day - January 1
- Martin Luther King's Birthday - 3rd Monday in Jan.
- Washington's Birthday - 3rd Monday in February
- Lincoln's Birthday - February 12
- Memorial Day - Last Monday in May
- Independence Day - July 4
- Labor Day - 1st Monday in September
- Admission Day - September 9
- Columbus Day - 2nd Monday in October
- Veteran's Day - November 11
- Thanksgiving Day - 4th Thursday in November
- Day After Thanksgiving Day - 4th Friday in November
- Christmas Eve (1/2 day) - December 24
- Christmas Day - December 25
- New Years Eve (1/2 day) - December 31

B. <u>WEEKEND HOLIDAYS</u>

For non-safety and 40 hour-a-week safety employees, any holiday that falls on Sunday will be observed on the following Monday. Any holiday occurring on Saturday will be given as a vacation day that year.

C. HOLIDAY WORK SCHEDULE

The Solid Waste Department normally will not work on the following holidays:

- New Year's Day - January 1
- Washington's Birthday - 3rd Monday in February
- Memorial Day - Last Monday in May
- Independence Day - July 4
- Labor Day - 1st Monday in September
- Veteran's Day - November 11
- Thanksgiving Day - 4th Thursday in November
- Christmas Day - December 25

Should the City determine that operational needs require the Solid Waste Department and supporting elements in the Equipment Services Department to work on any one of the above holidays; such departments may work those days with a majority consensus of the affected employees.

D. HOLIDAY ASSIGNMENT FOR DETECTIVE BUREAU DETECTIVES

A minimum of five (5) slots or a maximum of 25% of the Bureau Detectives will be available in the Detective Bureau Detectives to work each recognized holiday. Employees will be selected on a rotational basis from a seniority list. Seniority for this purpose is defined as time served in the Detective classification. Such opportunity will be available until the five (5) slots are filled for that particular holiday, or no volunteers remain, whichever comes first. Should an employee decline the opportunity to work a holiday when his/her name is selected, the employee's name will go to the bottom of the list until such time when all employees have been given the opportunity to work.

E. HOLIDAY WORK COMPENSATION

1. Non-Shift Employees

Employees who work certain holidays and are not regular shift employees shall receive, at the discretion of the department head, either compensatory time off or holiday pay for those holidays worked at time and one half.

* (Unit 5 - Technical/Professional Services, Unit 6 - Miscellaneous Services)

Any employee who is required to work on a holiday will receive one-and-one-half (1 1/2) times the normal hourly rate except for shift employees who have work schedules other than the normal work week (Monday through Friday) and the exception in Section 9 (A).

2. Shift Employees

(Non-Safety Units)

A non-safety shift employee, i.e., an employee who must work a regular schedule regardless of holidays, shall receive holiday pay at time and one half in addition to his/her regular pay when he/she works on a holiday except when the holiday occurs on a Saturday; in that case, the employee shall receive an extra vacation day. The employee shall receive compensatory time off for a holiday which falls on a regularly scheduled day off. For purposes of this paragraph, Monday observances of Sunday holidays shall be disregarded.

* (Unit 2 - Fire, Unit 12- Fire Management Unit)

Fire Department safety shift employees will receive credit for seven (7) 24-hour shifts in lieu of all holidays except for statewide and special holidays regardless of whether the employee is on or off duty when the holiday occurs.

* (Unit 4 - Police)

A police safety shift employee, i.e, an officer who must work a regular schedule regardless of holidays, may elect to receive pay at time and one half, or accumulate time off for the holiday over and above the 40 hour limit on compensatory time when he/she works on a holiday regardless of the day of the week on which the holiday falls. The officer shall receive compensatory time off for a holiday which falls on a regularly scheduled day off.

* (Unit 7 - Police Management Unit)

Police Sergeants and Police Lieutenants who are required to work on a holiday, shall receive, at the employee's option, either 8 additional hours pay or 8 hours compensatory time at the rate of 1 1/2 times the employee's base compensation.

3. PART-TIME OR TEMPORARY EMPLOYEES

Employees who work part-time on an hourly basis or are temporary workers are not entitled to holiday benefits. Only permanent employees who are on the regular payroll during the period that encompasses the holiday shall be entitled to full holiday benefits.

F. VACATION/SICK LEAVE ON HOLIDAYS

1. Any employee who is on vacation or sick leave when a holiday occurs will not be charged for that day. Holiday pay will be given only to those employees who are required to work on a holiday.

2. Whenever a sworn police officer who is scheduled to work on a holiday as part of his/her normal duty schedule becomes sick on a holiday, the officer shall be charged with using eight (8) hours sick leave, and shall also be credited with earning eight (8) hours compensatory time.

SECTION 10. ADMINISTRATIVE LEAVE - ALL MANAGEMENT PERSONNEL

A. DEFINITIONS

Administrative leave is to be encouraged and is the desirable means of handling unusual work situations or requirements which may be compensable under the provisions for compensatory time or overtime. Administrative leave may be granted to Administrative and Supervisory Management personnel by the Bureau Commander (Police Department) and the Department/Agency Head.

Administrative Leave is defined as an adjustment made in the employee's work schedule in recognition of work situations and/or requirements which justify granting time off during normal working hours when such adjustment will not interfere with or detract from the effectiveness and efficiency of the department.

For the purpose of administering this section, management personnel are considered to fall within the following categories by class:

Executive Management: All classifications listed in the Executive Management salary resolution are considered Executive Management.

Employees in this group are not entitled to earn or accrue compensatory time or overtime. However, such employees may avail themselves of administrative leave with prior notification and approval of the City Manager.

Administrative Management:

Accounting Manager
Assistant Library Director
Building Official
City Engineer
City Planner
Deputy Comm. Econ. Dir.
Equip. Fleet Superint.
Park Superintendent
Purchasing/Central Svcs. Mgr.
Recreation Director
Revenue Manager
Risk Mgmt/Safety Officer
Street Superintendent
Traffic Engineer

Info/Tele Systems Mgr. Utility Superintendent
Museum Director

Employees in this group may earn, accrue and use compensatory time and avail themselves of administrative leave as set forth below:

Supervisory Management: All classifications covered by Unit 3 - Management Group with the exception of the classifications considered "Administrative Management."

Employees in this group may earn, accrue, and use compensatory time and administrative leave the same as "Administrative Management."

Police Management: All classifications covered by Unit 7 -Police Management Group.

B. SPECIFIED PROVISIONS

Executive Management employees are limited to 40 hours of administrative leave annually, with adjustment in work schedules of generally not more than 1 day - usually 1 or 2 hours. Such leave requires the approval of the City Manager. Administrative leave does not accrue; may not be paid off upon retirement or termination, and is not used to avoid utilizing accrued compensation time or vacation.

Fire Management: All classifications covered by Unit 12 - Fire management Group.

Fire Management employees who are 40 hour employees shall be entitled to a maximum of five (5) days administrative leave per year, which may be taken at any time for any purpose, subject to prior approval of the Management employee's supervisor. Not more than two (2) days of administrative leave may be taken in any single calendar month. Employees are encouraged to use accrued administrative leave. In the event that administrative leave or any portion of the leave is not used by June 30 for each fiscal year, the employee shall file a claim to be reimbursed for the unused administrative leave that year on the appropriate form. Administrative leave may not be accrued from year to year.

All other Management Group employees shall be entitled to a maximum of four (4) days administrative leave per year, which may be taken at any time for any purpose, subject to prior approval of the Management employee's supervisor. Not more than two (2) days of administrative leave may be taken in any single calendar month. Employees are encouraged to use accrued administrative leave. In the event that administrative leave or any portion of the leave is not used by June 30 for each fiscal year, the employee shall file a claim to be reimbursed for the unused administrative leave that year on the

appropriate form (Appendix C).

SECTION 11. CONFERENCES, HOURS, AND DAYS OF WORK

Employees may be authorized by the City Manager to attend conferences and official business away from the City at full pay in accordance with current resolutions of the City Council.

Hours and days of work shall be in accordance with the rules established by the Personnel Office subject to approval of the City Manger.

SECTION 12. TERMINAL LEAVE

In the event a permanent employee terminates service with the City, terminal pay equivalent to vacation days accrued will be granted. Leave will be computed in full days and only for the last full month of employment.

SECTION 13. PERSONAL LEAVE

An employee may use any compensatory time he has accrued, but no more than three days of sick leave per fiscal year, as paid personal leave, provided an emergency or other urgent and justifiable cause is presented at the time the request is made for:

A. sickness within the employee's immediate family,

B. bereavement leave for other than members of the employee's immediate family,

C. court appearances when required to be present,

D. observance of one recognized annual religious service, **and**

E. any other personal need requiring a leave during working hours when approved by the City Manager upon the recommendation of the department head or his authorized representative.

Court appearances, observances of a recognized annual religious service, and other personal needs requiring an appointment during working hours are purposes for which the employee must provide no less than two days written notice. Failure to provide such notice shall result in such leave to be taken without pay. The supervisor shall waive the two day notice required provided the employee can demonstrate an urgent and justifiable reason for not providing the required notice.

Personal leave shall be used in accordance with the rules set forth in this manual and shall be charged at the employee's discretion against any unused sick leave, vacation, or compensatory time the employee has accumulated provided there is no

conflict with the conditions outlined above. Additional leave may be authorized by the City Manager from any leave accrued, or without pay.

SECTION 14. MATERNITY LEAVE (ALL FEMALE EMPLOYEES)

Maternity leave, not to exceed six months, shall be granted at the request of the employee. A maternity leave may be extended or renewed at the request of the employee for a period not to exceed six months.
The employee may utilize up to six (6) weeks of sick leave in conjunction with a maternity leave of absence, provided she has sufficient accrued sick leave.

Certification by the employee's physician shall be required recommending the effective date of the employee's absence, and a full authorization to return to work upon completion of the leave.

Subject to such employee's qualifications to perform the work, the employee shall be reinstated to the same classification she would have had prior to the maternity leave of absence.

Maternity leaves are available only for female employees of the City.

SECTION 15. PATERNITY LEAVE

* (Unit 2 - Fire)

A. An employee is entitled to two (2) days paternity leave if working a 40 hour shift and 2 - 24 hour shifts if working a 24 hour shift in the event the employees wife gives birth to a child. Such leave may be taken at the employees' discretion within 6 weeks before or after the estimated due date. These days will be taken without charge to the employees' accrued time.

B. Notice of such leave must be provided by the employee in advance so that the operational needs of the department are met.

C. The employee may be required to furnish evidence satisfactory to the City of the birth.

* (Unit 6 - Miscellaneous Services)

A. In the event an employee's wife gives birth to a child, the employee shall be entitled to two (2) days paternity leave which will be charged against his sick leave, provided the employee has sufficient sick leave available. If the employee has no sick leave available, the additional two (2) days shall be taken without pay or charged against the employee's vacation time.

B. Any time used for paternity leave shall not be charged as personal leave time.

C. The employee may be required to furnish evidence satisfactory to the City of the "birth."

RULE XI. SALARY ADJUSTMENTS

SECTION 1. APPLICATION OF RATES

Employees occupying a position in the City service shall be paid at the rate established for their positions according to Rule IV. All original appointments shall be made at the minimum wage for the position, except when in the opinion of the City Manager circumstances warrant appointment at a higher step.

SECTION 2. ANNIVERSARY DATE

After July 1, 1970, each employee's anniversary date will coincide with his/her appointment to a new position in a different classification. All employees will retain their current anniversary dates until appointed to a new classification provided, however, that no employee shall receive more than one merit increase within any six months period. Any employee who is within ninety (90) days of achieving a merit raise at the time of promotion shall be entitled to an increase for the promotion and an increase for the merit step. All future increases while in that classification shall be in accordance with Section 3 below. The date of appointment shall be used to compute vacation, sick leave, and retirement benefits.

The anniversary date of employees who take a leave of absence without pay for more than sixty (60) continuous calendar days will be extended by the length of the absence from work over sixty (60) days adjusted to the start of the nearest pay period.

** Also see Leaves of Absence Without Pay, page X-1

SECTION 3. ADVANCEMENTS

The advancement of an employee is not automatic, but the result of increased service value to the City. Service value shall be determined by recommendation of the department head, length of service, personal performance record, special training, and any other evidence that illustrates the desire of the employee to do a better job.

The five levels of advancement for each full-time and part-time position are granted according to the conditions outlined in Section 1 and 2 and the preceding paragraph. The merit increase effective date is the closest payroll period to the employees anniversary date.

Step A - Entrance Level
Step B - After six months service
Step C - After one year at B step

Step D - After one year at C step
Step E - After one year at D step

SECTION 4. ADVANCEMENT TO STEP “E” FOR ELECTRICIAN, EQUIPMENT MECHANIC AND SENIOR EQUIPMENT MECHANIC CLASSIFICATIONS

To be eligible for the "E" step merit increase, Electricians must have completed a minimum of 13 units in Industrial Electricity at a local college or pass an equivalent electrical examination. Equipment Mechanics and Senior Equipment Mechanics in the Equipment Services Department will be required to acquire the State Smog Certificate and a Class II driver's license, and demonstrate the same level of mechanical proficiency as those mechanics who possess the State Light and Brake Certificates and the ASE Certificate, and be performing in a meritorious manner before receiving "E" Step in the pay range. Possession of the State Light and Brake Certificates and the ASE Certificate shall be considered proof that the employee is performing at an acceptable level of proficiency to receive "E" Step.

SECTION 5. REDUCTION

If, in the opinion of the City Manager and Department Head, an employee has decreased service value to the City, a reduction in pay may be authorized. This reduction may not be below the minimum rate established for that position by the compensation plan. Any employee whose pay is to be reduced shall be provided with a written statement as to the reasons for the action at least two weeks prior to the date such action is to become effective.

RULE XII. MOVEMENT WITHIN THE CLASSIFIED SERVICE

SECTION 1. TRANSFER

A transfer may be affected at any time by the City Manager upon the recommendation of the department heads concerned or to meet the needs of the service. All transfers must be within comparable classes and no person shall be transferred to a position for which he/she does not possess the minimum qualifications. A transfer shall not be used to circumvent the minimum qualifications. A transfer shall not be used to circumvent the regulations surrounding promotion, demotion, advancement, or reduction.

Vacant positions within a classification may be filled by transfers on the basis of seniority by other employees within that classification provided that such a transfer will not be detrimental to the mission of that department. In the event an employee requests a transfer and such transfer is not approved, the employee and the affected employee organization will be notified of the reason therefor in writing within ten working days.

SECTION 2. TRANSFER POLICY FOR THE POLICE TECHNICIAN CLASSIFICATION

The Police Department will reasonably strive to fill vacant Police Technician positions on a transfer basis with employees from within.

When a request to fill a vacant or new Police Technician position has been approved by the City Manager's Office, a formal job bulletin will then be issued by the Personnel Department opening the position for five consecutive work days to solicit applications for transfer opportunities.

If it appears that it will be necessary to open the recruitment to applicants other than City employees, the Police Chief or his representative will notify the affected employee(s) in writing or orally within ten working days why, specifically, he is choosing to solicit applications on an open recruitment basis.

SECTION 3. TRANSFER POLICY FOR UNIT 2 - FIRE CLASSIFICATIONS

The purpose of this procedure is to provide a fair and equitable means for employees to voluntarily change their work locations, and to establish the policy within which administrative transfers shall be accomplished.

POLICY

Transfers will be considered with the employee's and the Department's best interest in mind.

The Fire Chief maintains the authority to assign personnel in the best interest of the Fire Department.

Fire Department seniority will be the major criteria considered, along with qualifications for special assignments.

All transfer requests shall be maintained by the designated section within the Fire Department in a Master File Book. Vacancies will be filled from transfer requests on file in the Master File Book, unless no qualified personnel have submitted a transfer request for the vacancy.

In order to provide a diversity of experience, and to allow for evaluation of performance by more than one supervisor, all probationary personnel will be administratively transferred. Permanent, full-time Firefighters who are temporarily transferred in order to facilitate probationary or administrative transfers shall have the opportunity to return to their previous assignment when the affected Firefighter is transferred again, or within one (1) year.

PROCEDURE

Employees who wish to request a transfer shall complete an Employee Transfer Form. The transfer form shall be completed in triplicate. The employee will retain one (1) copy and submit two (2) copies to his/her immediate supervisor. The immediate supervisor shall forward both copies to the Department's Personnel Office.

Upon receipt and filing of the transfer request in the Master File Book, the Fire Department shall return a copy of the request to the employee, indicating that the request is on file.

Employees wishing to cancel a previous transfer request shall do so by memorandum, through channels, to the Fire Department's designated section.

The memorandum shall be applied to the appropriate Transfer Request Form in the Master File Book.

When a vacancy occurs, a notice shall be sent to all stations for posting, announcing the opening and declaring the vacancy either open for bid or closed, including cause if closed. Such notice shall be for a period of thirty days after which time the bidding will close and the most senior qualified member, subject to the stated Administrative requirements, will be selected for transfer.

The notice of transfer of this member shall be posted at each work location for no less than fifteen (15) days nor more than thirty (30) days, and the transfer of the member shall take place during this period. This notice of transfer of a member may include a statement which announces the opening of the members vacated position for bid or announces the closing of the position and the cause for the closing. When

this occurs, the transfer notice will remain posted for thirty days and is the vacancy notice described in the paragraph immediately above.

If after an opening has been posted for thirty days and no member has filed a request for transfer to the position, the first request received, thereafter, may be honored. Or the position may be filled administratively without further notice other than the posting of the transfer notice.
In the event it becomes necessary to bypass the most senior person requesting any vacancy, that person shall be provided a written explanation for the decision.

Employees may submit a transfer request for any authorized position. The following positions, however, will be filled by appointment approved by Fire Department management:

Fire Captain in Fire Safety Control
Fire Captain Field Training Officer
Fire Captain Paramedic Coordinator

If more than one (1) request is filed by an employee, it shall be the responsibility of that employee to prioritize his/her choices in the space provided on the transfer request form for each request filed.

Transfer requests will be honored only after the employee has served at least one (1) year in his/her present assignment. This requirement shall not apply to those who have been transferred by administrative direction rather than as a result of a transfer request.

All transfer requests will expire December 31 of each year. The Master File Book will be purged the first working day in January.

The transfer policy identified in provisions 5.6 through 5.22 may be amended at any time upon agreement of the Fire Department management and the Association.

SECTION 4. PROMOTION

Insofar as practical and in keeping with the best interests of the service, all vacancies in the classified service shall be filled by promotion after a promotional examination has been held and an eligible list established.

In those non-supervisory positions for which a written examination is not practical in management's judgement, promotions shall be on the recommendation of the supervisor and department head and confirmed by the City Manager. Among the factors to be considered, but not necessarily limited to, are:

A. Knowledge, training, ability, skill, and efficiency.

B. Ability to get along well with fellow employees.

C. Physical condition which would limit the employee's ability to perform the job applied for.

D. Attendance record.

E. Experience

F. Seniority.

Where all factors are not significantly different, seniority shall prevail.

An employee who receives a promotion to a higher classification shall receive a one (1) step increase in pay or the "A" step of the new classification, whichever is higher.

All employees who receive a promotion shall serve a new probationary period for the classification into which they have been promoted.

SECTION 5. PROMOTIONAL PREFERENCE

* (Unit 5 - Technical/Professional Services)

The City will reasonably strive to fill vacant positions on a promotional basis with employees from within.

City employees who apply for existing vacancies and are among the top five candidates on the eligibility list will be given an interview by the department head. If the city candidate is not selected, a written response with reason for non selection will be given by the department head.

* (Unit 6 - Miscellaneous Services)

The City will reasonably strive to fill vacant positions on a promotional basis with employees from within.

Whenever the City Manager's Office determines that an examination for a vacant position is to be promotional only, preference shall be given first to those employees in the department where the vacancy exists, then City-wide provided all other things are relatively equal.

When a request to fill a vacant or new position has been approved by the City Manager's office, a formal job bulletin will then be issued by the Personnel Department opening the position for five consecutive work days to solicit applications for promotional opportunities. Job bulletins will be posted in the Personnel Department, the Ontario Municipal Services Center (classroom area), the Library, the Police Department, and the Fire Department. Job bulletins will also be mailed to the appropriate union-designated official.

If it appears that it will be necessary to open the recruitment to applicants other than City employees, the affected department head will notify the Union Chief Steward why, specifically, the choice is to solicit applications on an open recruitment basis. Excluded from the promotional preference policy all the Duplicating Clerk, the Park Maintenance Worker I, and the Street Maintenance Worker I from the promotional preference policy.

Nothing in this section shall be construed as superseding the Rules and Regulations set forth in the Personnel Manual.

SECTION 6. DEMOTION

A department head, with the approval of the City Manager, may demote any employee who so requests it or whose performance falls below standard, or for disciplinary purpose, or to prevent a layoff. Any demotion to prevent layoff may be reversed when the employee's previous position is reopened. An employee may not be demoted to a class for which the employee does not possess the minimum qualifications. Normally ten (10) working days prior to the demotion, a written statement shall be given to the employee stating the reasons for the action, and one copy shall be filed in the Personnel Office.

If the demoted employee had achieved permanent status in a previous class, the employee shall be entitled to permanent status in the class to which he or she has been demoted.

SECTION 7. SUSPENSION

An employee may be suspended by a department head, with the approval of the City Manager, for disciplinary purpose or for any just cause which is in the best interests of the City. Suspension shall not exceed thirty (30) days without pay nor shall it exceed more than thirty (30) days in any fiscal year.

Normally one week prior to a l-3 day suspension (l/2 shift to l l/2 shift for Fire safety shift employees), and two weeks prior to a four (4) day or more (2-shift or more for Fire safety shift employees) suspension, a suspended employee will be provided with a written copy of the charges made against the employee.

SECTION 8. REINSTATEMENT

An employee who has resigned with a good record and who has complied with all personnel procedures may be reinstated to his or her former position if vacant, or to a comparable one, within one year. Upon reinstatement, the employee shall be considered for all purposes to have received an original appointment.

RULE XIII. SEPARATION FROM THE SERVICE

SECTION 1. DISCHARGE

The City Manager may dismiss anyone in the City service at any time. However, if the probationary period has been completed, just cause must be shown. Any employee who is to be discharged will be provided with a written statement two weeks before the effective date of the termination setting forth the reasons for such action.

SECTION 2. LAYOFFS

The City Manager may lay off permanent and probationary workers at any time for lack of work or other changes that have taken place. The employee and the employee's organization are to be given two weeks notice before such a layoff is to take place. The City shall meet and consult with the concerned employee organization on such matters as the timing of the layoff and the number and identity of the employee affected by the layoff during the two week period prior to the proper layoff action.

A demotion or transfer to another department may be made to prevent a layoff provided the employee is qualified by education and/or experience and is capable of performing the duties of the classification.

In the event of a layoff, those employees with the least service in the classification affected shall be laid off first; if a recall begins, the most senior employees laid off in the classifications required shall be recalled first. Strict application of seniority shall prevail unless exceptional circumstances occur of which the concerned employee organization shall be fully apprised in advance. The order of layoff shall be:

A. Temporary employees in the affected classification shall be removed first.

B. Probationary employees in the affected classification shall be removed next.

C. Exceptional circumstances may include the desirability of maintaining a balanced department or work unit and maintaining employees in the classification, department, or section who have the ability to perform the work available.

The employee scheduled to be laid off shall be entitled to displace to a position in a classification occupied by an incumbent with less overall City (displacement seniority) seniority provided it is in a position in which he/she formerly held a permanent appointment or is qualified by education and/or experience and is capable of performing the duties of the classification.

The employee with the least displacement seniority shall be displaced by the person scheduled for layoff. The employee displaced shall be considered as laid off for the same reason as the person who displaced him/her and shall in the same manner be eligible to displace to a position in a classification in which he/she formerly held a permanent appointment or is qualified by education and/or experience and is capable of performing the duties of the classification. (For further details on the re-employment list, see Rule VII, Section 2, of the Personnel Rules and Regulations.)

Failure to return to work from layoff within fifteen (15) calendar days after notice to return by certified or registered mail to the employee at his last known address on file with the City Personnel Office or by personal delivery shall constitute the employee's waiver to return to work and eliminates any future re-employment responsibilities placed on the City.

SECTION 3. RESIGNATION

An employee wishing to leave the City service in good standing shall file with the department head, a written statement as to the reasons for leaving, and the effective date, at least two weeks before leaving. The time limit of the resignation may be waived at the discretion of the department head concerned. The department head shall forward a copy of the resignation and other personnel forms as currently required, to the Personnel Department.

SECTION 4. EXIT INTERVIEWS

The department head or City Manager may conduct or have conducted, an exit interview, if in their opinion information can be gained which will improve or enhance present operating procedures.

RULE XIV. GRIEVANCE PROCEDURE

A grievance procedure for each collective bargaining unit exists for the resolution of an alleged violation, misinterpretation, inequitable application, or non-compliance with existing City codes, memoranda of understanding, rules, regulations, policies, and/or working conditions.

The procedure specific to each collective bargaining unit may be found in Appendix D.

RULE XV. TRAINING OF EMPLOYEES

SECTION 1. RESPONSIBILITY FOR TRAINING

The department heads in conjunction with the Personnel Department and under the guidance of the City Manager shall be responsible for developing training programs. Such training programs may include lecture courses, demonstrations, assignments of reading material or any other methods that may be available for increasing the knowledge of municipal employees in the performance of their duties.

City employees desiring to further their professional development through advanced education may be reimbursed for their tuition costs if they comply with the following conditions:

A. The basic conditions governing prepayment and reimbursement for courses and seminars are:

1. Secure prior approval of the department head and the City Manager or designee.

2. Achieve a final grade of C or better.

B. The employee may receive prepayment of tuition when:

1. The course is required by the department head and the City Manager, departmental funding is available, the department head and City Manager sign a memorandum to this effect before the start of classes. One copy of the memo will be retained in the departmental files, and one copy will be returned to the employee.

2. A claim is submitted before the last City Council meeting prior to the start of classes. (Evidence of the final grade must be forthcoming within 30 days of the completion of the course or written notice will be given to the employee stating that the amount of the tuition fees will be deducted from the next pay check.)

C. City employees who are taking courses or attending seminars are authorized to use city vehicles for transportation to such courses when one or more of the following conditions are applicable:

1. The employee is required by the department head to enroll in and attend the course or seminar.

2. The employee attends a workshop of relatively short duration that is conducted during normal duty hours.

3. The employee is required by the department head to attend special courses or seminars given by a manufacturer or professional organization.

D. The payment of mileage fees for the use of private vehicles will be made only when the use of a city vehicle is not practical and when one or more of the conditions described above in Item C is applicable. Justification for mileage must be submitted in writing to the City Manager;s Office and signed by the employee and the department head prior to the start of the course or seminar.

SECTION 2. GUIDELINE FOR APPROVING TRAINING COURSES

A. Guidelines

1. For purposes of this section, a training course is considered to be a regular college course, seminar, conference, institute or other educational experience not offered locally which would require an expenditure of city funds.

2. The course should be directly related to the duties being performed or that will be assumed within the near future. Placement of an individual's name on an eligible list should not be used as the sole criteria in determining whether new duties will be assumed in the near future. Lower classifications should generally be concerned with courses which will develop their technical skills. As they are promoted, greater stress should be given to courses emphasizing supervisory and administrative skills.

3. Each application should be checked to determine if funds have been budgeted for the course.

4. Scheduling

(a) All courses should be scheduled for off-duty time whenever possible.

(b) Department head (division head in the larger departments) should determine if the loss of the employee will cause a problem in fulfilling the mission of the department.

(c) In those instances where more than one individual requests the same course, adequate justification must be given by the department head if he/she thinks more than one employee should attend the course.

5. A course should not be approved if it duplicates courses with comparable training at Chaffey College or other local junior college.

6. Each application should be verified to determine that it does not duplicate prior courses taken by the individual.

7. Each applicant's file should be checked to determine the last time a course was attended. Employees in a department, whenever practical, should be given equal opportunity to attend training courses.

8. A Request For Approval of Training Course form must be completed prior to the employee's participation in any training course. (Appendix E).

SECTION 3. CREDIT FOR TRAINING

Participation in and successful completion of special training courses may be considered in promotions and advancements. The evidence for such training activity shall be filed with the employee's department and the Personnel Office. The filing of such material is the responsibility of the employee.

SECTION 4. EDUCATIONAL INCENTIVE PROGRAMS

A. ENGINEERING, BUILDING, PLANNING AND PURCHASING DEPARTMENTS

1. General Guidelines

(a) The conversion factor for semester units to quarter units shall be 1 1/2 quarter units equals 1 semester unit. A semester shall be considered 18 weeks and a quarter 12 weeks. Each course shall be given the appropriate number of quarter units to the nearest .1 and the total shall e rounded to the nearest unit.

(b) It shall be the employee's responsibility to show proof of all successfully completed courses (grade of "C" or better) and to have these courses submitted to the Personnel Department for placement in the employee's personnel file.

(c) Educational incentive pay is not to be considered a part of the employee's base pay and in order to achieve and maintain the incentive, the employee must be performing in a meritorious manner and with increased productivity, as determined by the Department Head.

(d) Employees on temporary status or in the initial probationary period shall not be eligible for educational incentive pay. Employees receiving educational incentive pay and who receive a promotion, shall have one year to complete educational incentive requirements for that classification in order to retain their educational incentive pay.

(e) To be eligible for education incentive pay, the education/certification must be earned while employed with the City of Ontario.

(f) The maximum incentive attainable under this program is one full step.

(g) The incentive shall be effective on the first day of the pay period following the employee's written request to the Department Head, including proof of certification or completion of the units required, and after approval by the Personnel Officer.

(h) Correspondence courses in a degree program from recognized schools of engineering, and approved by the City Engineer, shall be acceptable for the incentive program.

(i) Employees applying for educational incentive must submit a course outline for degree program in which they are enrolled. Related college curriculum other than engineering and planning may be submitted to the City Engineer or City Planner for consideration of incentive pay. Such curriculum will be subject to recommendation by the City Engineer or City Planner to the City Manager for final approval.

(j) In an effort to provide the greatest flexibility and potential for departmental utilization of certified employees in the area of certification, employees in the Billing Department agree to discuss the program with the Building Official prior to enrollment.

(k) It is understood that re-certification for the Building Department incentive is required every three years, and that the re-certification must be accomplished in order to retain the educational incentive award.

2. Senior Duplicating Machine Operator

(a) A one-time bonus of 2 1/2% of an employee's annual salary will be granted to those employees with a Graphics Technology Certificate.

3. Engineering Aide I and Planning Aide

   (a) A one-time bonus of 5% of an employee's annual salary will be granted to those employees after completion of two years of college with an Associate degree in engineering or planning, or equivalent progress in a Bachelor's program in engineering or planning.

   (b) A one-time bonus of 2 l/2% of an employee's annual salary will be granted to those employees after completion of one-half (1/2) of core courses in Associate degree program in engineering or equivalent course work in Bachelor's program. Continued enrollment in a degree program must be maintained at a level sufficient to achieve Associate degree within three years or equivalent level of course work in a Bachelor's program.

4. Engineering Aide II and Construction Inspector

   (a) A one-time bonus of 5% of an employee's annual salary will be granted to those employees who receive a Bachelor's degree in engineering.

   (b) A one-time bonus of 3 1/2% of an employee's annual salary will be granted to those employees who receive an E.I.T. certificate.

   (c) A one-time bonus of 2 1/2% of an employee's annual salary will be granted to those employees after completion of college with an Associate degree in engineering, or have completed one-half (1/2) of the core courses in Bachelor's program with progress being made toward the achievement of a Bachelor's degree within six years.

5. Senior Construction Inspector and Survey Party Chief

   (a) Full-Step - Employee in possession of a Land Surveyor's license will be eligible for one step incentive.

   (b) A one-time bonus of 5% of an employee's annual salary will be granted to those employees who receive a Bachelor's degree in engineering or an E.I.T. certificate.

   (c) A one-time bonus of 2 l/2% of an employee's annual salary will be granted to those employees who receive an L.S.I.T. certificate or after completion of Associate degree program in Engineering or have completed one-half (l/2) of the core courses in a Bachelor's program in Engineering. Must be enrolled in a Bachelor's program with progress being made

toward the achievement of a Bachelor's degree within six years.

6. Engineering Assistant and Assistant Planner

   (a) Full- Step - Registered Civil Engineer's license.
   (b) Half-Step - Land Surveyor's license.

   (c) A one- time bonus of 5% of an employee's annual salary will be granted to those employees who receive a Master's degree in engineering, planning, or closely related field as approved by the City Engineer or City Planner.

   (d) A one-time bonus of 2 1/2% of an employee's annual salary will be granted to those employees who receive an E.I.T. certificate, an A.P.A. approved or Urban Planning Certificate, or a Bachelor's degree in engineering, planning, or closely related field as approved by the City Engineer or City Planner.

7. Associate Civil Engineer

   (a) A one-time bonus of 5% of an employee's annual salary for any employee who receives a Master's degree in chemistry, biology, or related science major as may be approved by the City Engineer in accordance with guideline A (8) above.

   (b) A one-time bonus of 2 1/2% of an employee's annual salary for employees who receive a Bachelor's degree in chemistry, biology, or related science major as may be approved by the City Engineer in accordance with guideline "A" above.

8. Building Inspector, Senior Housing Rehabilitation Specialist, Housing Rehabilitation Specialist II, and Code Enforcement Inspector

   (a) Half-Step - Certification by the International Conference of Building Officials as a Certified Combination Inspector.

9. Assistant Civil Engineer and Associate Planner

   (a) Full-Step - Registered Civil Engineer's License (Assistant Civil Engineer)

   (b) A one-time bonus of 2 1/2% of an employee's annual salary will be granted to those employees who receive an APA approved or Urban Planning Certificate, or a Master's degree in engineering, planning, or closely related field as approved by the City Engineer or City Planner.

B. Police Officers Educational Incentive Program

1. Effective January 1, 1991 the following educational incentive program will replace all programs currently in effect, including the one time bonus plan, on-going compensation plan and tuition reimbursement practice.

   (a) Employees who have in their possession or who obtain in the future an AA Degree, AS Degree, or Intermediate POST Certificate will receive $50.00 per month in addition to their base compensation.

   (b) Employees who have in their possession or who obtain in the future a BA Degree, BS Degree, or Advance POST will receive $50.00 per month in addition to their base compensation.

2. Subsections (a) and (b) shall be cumulative allowing an employee to earn a minimum of $50 if the employee qualifies for either Subsection (a) or Subsection (b). An employee may earn a maximum of $100 per month if the employee qualifies for both Subsections of (a) and (b).

C. EQUIPMENT SERVICES DEPARTMENT

Due to changing technology, changing repair procedures, and the on-going necessity for people in the automotive repair field to continue to study and attend training classes on their own initiative, Equipment Mechanic II's and Senior Equipment Mechanics in the Equipment Service Department will receive 5% educational incentive pay, or the equivalent of one full salary step increase upon acquisition of the State Smog Lights and Brake Certificates, the heavy duty General Mechanic Certificate from ASE, and a Class II driver's license.

1. General Guidelines

   (a) The incentive pay shall be effective on the first day of the pay period following the employee's written request to the Equipment Services Superintendent and presentation of proof of certificates.

   (b) Educational incentive pay is not to be considered a part of the employees base pay and in order to achieve and maintain the incentive, the employee must be performing in a meritorious manner, and with increased proficiency as demonstrated in merit reviews, and continue to maintain current active certificates.

   (c) Equipment Mechanic II's and Senior Equipment Mechanics in all

salary step ranges, including "E" Step, shall be eligible for educational incentive pay after they have successfully passed the probationary period for permanent employees.

(d) Employees on temporary status or in the initial probationary period shall not be eligible for educational incentive pay.

(e) The maximum incentive pay attainable under this program is 5% or the equivalent of one full salary step increase.

SECTION 5. CPR AND FIRST-AID TRAINING

* (Unit 6 - Miscellaneous Services)

The City agrees to provide CPR and first-aid training through the Ontario Fire Department, when available, to two employees per year per Department in the Public Services Agency. Names of employees qualified to give first-aid and CPR shall be posted at the Municipal Services Center.

RULE XVI. UNION BUSINESS/ACTIVITY

SECTION 1. EMPLOYEE ORGANIZATION MEMBERSHIP

Membership in any labor union or employee organization is not compulsory and any decision concerning any organization is at the discretion of the employee.

No employee may join or belong to any organization which advocates the overthrow of constituted authority by force, violence, or other unlawful means.

Any employee guilty of attempting to coerce or intimidate any other employee concerning this rule will be subject to disciplinary action.

Refer to specific Memorandum of Understanding for membership requirements.

SECTION 2. DUES DEDUCTION

General provisions for all employee groups:

A. The city will deduct from the pay of each employee who signs an authorized payroll deduction card a monthly sum certified to the employee by the secretary of the employee organization as the regular monthly dues of the organization. The city will not deduct any pay for initiation fees, fines or other special assessments. Dues deduction shall be a specified uniform amount for each employee and any change in the amount of dues shall be written authorization of each member of the employee organization.

B. The employee's earnings must be regularly sufficient after other legal and required deductions are made to cover the amount of the dues check-off authorized. When a member in good standing of the union is in a non-pay status for an entire pay period, no dues withholding will be made to cover that period from future earnings, nor will the member deposit the amount with the city which would have been withheld if the member had been in a pay status during that period. In the case of an employee who is in a non-pay status during only part of the pay period and the salary is not sufficient to cover the full withholding, no deduction shall be made. In this connection, all other legal and required deductions have priority over employee organization dues.

C. Dues withheld by the city shall be transmitted to the officer designated by the employee organization in writing at the address specified in the letter of authorization.

D. The employee organization shall indemnify, defend, and hold the City of Ontario harmless against any claims made, and against any suit instituted against the City of Ontario on account of check-off of employee organization

dues. In addition, the employee organization shall refund to the City of Ontario any amounts paid to it in error, upon presentation of supporting evidence. The city will also, upon presentation of proper supporting evidence, adjust any clerical errors made in deducting employee organization dues.

E. Any employee may revoke his/her authorization for deduction of union dues only as provided by the terms set forth on the deduction form or in the Memorandum of Understanding. Refer to the appropriate M.O.U. for details. The format for dues authorization cards for the various employee organizations is found in Appendix F.

F. An employee organization may submit its own authorization card if it is substantially similar to those outlined in Appendix F and which is acceptable to the City Manager.

G. Any additional deductions beyond the normal dues for the employee organization will be shown separately.

SECTION 3. MANAGEMENT/EMPLOYEE RELATIONS PROGRAM

* (Unit 4 - Police)

A program exists within the Police Department for the purpose of strengthening and improving the working relationship between management and supervisory personnel and the employees. The objectives of the program include, but are not limited to, the clarification of rules, regulations, and policies of the City; to improve communication between union stewards and officers and City management and supervisory personnel; to curb, if not eliminate, rumors and pressures which are detrimental to employee morale and the employer-employee relationship; to encourage joint solutions to problems of mutual concern; and to strengthen and improve the use of existing and agreed upon procedures which serve to protect the interests of the employee and employer.

* (Unit 6 - Miscellaneous Services)

If either the Union or City feels that a need exists to meet, the Department Head and the Steward(s) from the Department agree to meet once a month for a maximum of one (1) hour, in an effort to strengthen and improve the working relationships between management, supervisory personnel, employees, and the Union. The subject of the meeting may include but is not limited to, the clarification of rules, regulations, and policies of the City; improved communication; the elimination of rumors and pressures which are detrimental to employee morale and the employer-employee relationship; the encouragement of joint solutions to problems of mutual concern; the strengthening and improvement of the use of existing and agreed upon procedures which serve to protect mutual interests.

Either party contact the other when a meeting is desired in order to set a mutually agreeable date. An agenda will be submitted to each party forty-eight (48) hours prior to the meeting. The agenda shall include a brief discussion of each item to be discussed.

Participants in these meetings shall be as follows in each of the designated area:

Area	Union Representative	Management Representative
Solid Waste Dept.	Steward	Solid Waste Supt.
Streets Department	Steward	Streets Supt.
Utilities Department	Steward	Utilities Supt.
Equipment Svcs. Dept.	Steward	Equipt Fleet Supt.
Parks Department	Steward	Parks Director
Library Steward	Steward	Library Director
Fire Department	Steward	Fire Chief
City Hall	Steward or President of Local	Assistant City Mgr.
Police Department	Steward	Police Chief

General Guidelines for these meetings will be as follows:

A. It is not the intent of these meetings to serve as a substitute for other specific administrative, judicial, or quasi-judicial agencies.

B. No grievances being processed under another part of this Agreement shall be discussed and no bargaining shall take place.

C. Topics that could lead to grievances may be discussed.

D. Each topic shall be discussed fully and action reached before proceeding to another topic. Topics requiring further study may be tabled. When mutually satisfactory decisions are not reached, the parties may pursue such topics in any other manner that is lawful.

E. Only those topics on the agenda shall be discussed unless it is an emergency item which may be added by mutual consent.

SECTION 4. UNION/ASSOCIATION BUSINESS RELEASE TIME

* (Unit 2 - Fire)

The City will permit the use of exchange time by Union members for the purpose of conducting authorized Union business. The Union agrees to provide an appropriate replacement during that period of time. The Union further agrees to assume any and all financial liability for wages which the replacement may claim against the City for the time worked as a replacement by reason of this article. The City and the Union will meet and confer on any changes in this policy as may be made necessary by other legislation.

* (Unit 3 - Management Unit, Unit 7 - Police Management Unit, Unit 12 - Fire Management Unit)

A designated member of the Group may receive reasonable release time to represent another unit member in matters relative to working conditions. Such release time shall be accommodated only after operational needs of the releasing department are met.

* (Unit 4 - Police)

Association board members shall be entitled to devote a reasonable amount of time to Association business without loss of compensation or benefits. Prior to participating in such business the board member(s) or designee(s) shall obtain authorization from their immediate supervisor. Denial of such request shall not be arbitrary, capricious or otherwise contrary to the spirit and intent of the M.O.U. If the request is denied, the immediate supervisor shall establish an alternative time convenient to the parties when the representative can be released from his/her work assignment.

* (Unit 5 - Technical/Professional Services)

One Union/Association Steward per Department employed by the City of Ontario, shall be entitled to devote a reasonable amount of time to Union/ Association business without loss of pay. Prior to participating in such business, the Steward shall first obtain authorization from his/her immediate supervisor. The immediate supervisor may deny such request if it is deemed that such a request would unduly interfere with the efficiency, safety, or security of City operations. If the request is denied, the immediate supervisor will establish an alternate time convenient to the parties when the representative can be released from his/her work assignment.

* (Unit 6 - Miscellaneous Services)

An employee who is elected or appointed to Union office may be granted leave of absence from the City without pay for up to a six month period to attend conferences, conventions, or special training schools related to Union affairs.

This leave of absence shall be governed by the conditions for leaves of absence as outlined in Rule X, of the Personnel Rules and Regulations. This leave shall not constitute a break in service leaving seniority rights unimpaired.

One Union Steward per Department employed by the City of Ontario, shall be entitled to devote a reasonable amount of time to Union business without loss of pay. Prior to participating in such business, the Steward shall first obtain authorization from his/her immediate supervisor. The immediate supervisor may deny such request if it is deemed that such a request would unduly interfere with the efficiency, safety, or security of City operations. If the request is denied, the immediate supervisor will establish an alternate time convenient to the parties when the representative can be released from his work assignment.

The Union expressly recognizes that the City reserves the right to unilaterally discontinue this program at any time. However, the City agrees that prior to taking such action, the City will meet and consult with representatives of the Union, the nature of the intended action.

SECTION 5. SHIFT CHANGE FOR UNION MEETINGS

* (Unit 6 - Miscellaneous Services)

All night shift Union stewards have the option subject to formal approval of the supervisor, to switch to a day shift, once per month, in order to attend Union meetings. The night shift steward shall notify the supervisor at least one week in advance of the intended switch to a day shift for one day.

SECTION 6. DESIGNATION OF UNION STEWARDS

* (Unit 5 - Technical/Professional Services)

Employees selected by the Association to act as Association representatives shall be known as "Stewards". The name of employees selected as Stewards, and the names of other Association representatives who may represent employees shall be certified in writing to the employer by the Association.

* (Unit 6 - Miscellaneous Services)

Employees selected by the Union to act as Union representatives shall be known as "stewards." The name of employees selected as stewards and the names of other Union representatives who may represent employees shall be certified in writing to the employer by the local Union.

A minimum of one steward on each shift for each foreman or supervisor; if any foreman or supervisor supervises 50 employees, there shall be at least two stewards in the section under the supervision of such person; an additional steward shall be selected for each 25 employees beyond 50 employees in each section.

The formula for determining the number of Union stewards is intended to provide minimum Union representation; it shall not be construed to limit the Union's right to select the number of stewards required to represent properly, the employees in the bargaining unit.

SECTION 7. CONFIDENTIAL EMPLOYEES

All administrative clerical personnel within the Personnel and City Manager's Office, and all classifications specified in Section 1 of the pay plan are considered Confidential classifications and are excluded from participation in all facets of the "meet and confer" process.

SECTION 8. UNLAWFUL ACTIVITIES

* (Unit 4 - Police, Unit 5 - Technical/Professional)

The Association, its officers, agents, representatives and/or members will not cause, condone or participate in any strike, walkout, work stoppage, job action, slow down, speed up, sick-out, refusal or failure to faithfully perform assigned duties and responsibilities, withholding of services or other interference with City operations, including compliance with the request of other labor organizations within the City to engage in any or all of the preceding activities.

In the event of such activities, the Association shall immediately instruct any persons engaging in such conduct that they are in violation of the M.O.U. and that they are engaging in unlawful conduct, and that they should immediately cease engaging in such conduct and resume full and faithful performance of their job duties.

In addition to other lawful remedies for the disciplinary action available to the City, the City may, in addition to the above, invoke any and all remedies available to it under its Employer-Employee Relations Section of the Personnel Rules and Regulations.

* (Unit 6 - Miscellaneous Services)

The Union , its officers and/or members will not promote or support any illegal concerted effort which affects the performance of their assigned duties and responsibilities.

* (Unit 5 - Technical/Professional Services)

In addition, the City will not participate in any unlawful labor practices.

RULE XVII. POLITICAL ACTIVITY

SECTION I. RESTRICTIONS

City employees should be aware that the Government Code of the State of California, Sections 3201 - 3209, imposes certain restrictions on political activities of city and other government employees.

The following restrictions are applicable to all city employees:

A. A city employee shall not participate in any political activity while in uniform. This applies not only to fire and police personnel but to a non-safety employee required or authorized to wear any type of city uniform.

B. A city employee who uses a badge or insignia as evidence of his/her authority shall not use his/her badge or insignia in any way to advance the interests of a political candidate. This includes business cards.

C. A city employee shall not use his/her influence or authority to confer or withhold or promise to confer or withhold any position, promotion, salary change, or other personnel action for the purpose of influencing the political action of another.

D. A city employee shall not permit any office or place of work in the city to be used for the purpose of making or giving notice of any political assessment subscription or contribution. This does not apply to any public auditorium, park or any other place used for political rallies and where governmental business is not conducted.

E. A city employee shall not participate in political activities or conduct the business of a political candidate while on duty or during work hours.

RULE XVIII. RELATIVES

It is the policy of the City not to discriminate in its employment and personnel actions with respect to its employees, prospective employees and applicants on the basis of family relationships. No employee, prospective employee, or applicant shall be denied employment or benefits of employment solely on the basis of his or her family relationships.

Not withstanding the above provisions, the City retains the right:

A. To refuse to place one relative under direct supervision of another where such has the potential for creating adverse impact on supervision, safety, security or morale.

B. To refuse to place both relatives in the same department, division, or facility where such has the potential for creating adverse impact in supervision, safety, security, or morale, or involves potential conflicts in interest.

RULE XIX. RESIDENCE

SECTION 1. FIRE DEPARTMENT EMPLOYEES

Fire Department employees assigned to standby response functions within the classifications of Fire Equipment Mechanic, Senior Communications Technician, and Communications Technician, and receiving a salary adjustment for standby duty, shall be required to reside within a thirty (30) minute response time to the geographical proximity of Mission Boulevard and Grove Avenue.

Non-shift Fire Department employees assigned to response functions during emergencies such as the "Duty" Fire Prevention Inspector, shall be required to reside within a reasonable response time to the geographical proximity of Mission Boulevard and Grove Avenue. Expectations are that with "paging notification", reasonable response time would be approximately thirty (30) minutes.

SECTION 2. PUBLIC SERVICE AGENCY EMPLOYEES

Public Service Agency employees in the classifications of Heavy Equipment Operator, and Public Service Technician, who reside within a reasonable response time to the Public Services Yard are eligible to participate in the standby program provided they are qualified to do so. (See Rule IV COMPENSATION for additional information.)

RULE XX. EMPLOYEE CONDUCT

SECTION 1. OUTSIDE EMPLOYMENT

Full time city employees may not carry on concurrently with their public service any private business or undertaking, attention to which affects the time or quality of their work or which casts discredit upon or creates embarrassment for the city government.

Outside employment, other than special police work, must be authorized by the department head and the City Manager.

SECTION 2. PERSONAL CONDUCT

Employees are required at all times to conduct themselves in such a manner as to reflect no discredit upon the City of Ontario as specified by the Code Ethics, Rule XXII.

SECTION 3. OFFICIAL BADGE OR INSIGNIA

No city employee who uses a badge or insignia as evidence of his/her authority shall allow it to be used by any other individual. Neither shall the city employee use his/her badge or insignia in any way to advance a private interest. Any infraction of this rule shall result in immediate disciplinary action by the department head concerned.

SECTION 4. FINANCIAL AFFAIRS

Employees shall so arrange their personal financial affairs that creditor and collection agencies will not have to make use of the offices of the City Manager or department heads for the purposes of making collections. Failure on the part of the employees to meet just obligations shall be grounds for disciplinary action or dismissal.

SECTION 5. EMERGENCY DATA

The Emergency Data information card is required to enable the Personnel Office to notify a relative in the event of an emergency or to complete the necessary documents in the event of the death of an employee. Complete and up-to-date information can expedite the process of securing the benefits for the beneficiaries.

A. The Emergency Data Card will be completed as a part of the initial processing.

B. Any changes affecting the information on the card should be submitted within three days to the Personnel Office.

C. All information should be verified for accuracy.

SECTION 6. GROOMING STANDARDS

* (Unit 2 - Fire)

A. Mustaches must have a neat appearance. They must be trimmed in such a manner that they shall not extend further than 1/2" below the corner of the mouth, nor shall they meet the sideburns.

B. Sideburns shall be neatly trimmed and present a groomed appearance. They shall not extend beyond a horizontal line drawn 1/2" below the corners of the mouth. They shall not flare wider than a point drawn on a vertical line from the outside corners of the eyes.

C. Hair when groomed shall be neat, cleaned, and trimmed. Hair shall not extend below the bottom of the collar when standing at attention. Hair in from shall be groomed so that it does not fall below the eyebrows when a person is uncovered and it shall not bush out below the band in the front of a properly worn headgear. The hair shall not fall below the bottom of the ear and in no case shall the bulk or length of the hair interfere with the proper wearing of any safety equipment. The exact maximum length of the hair is not specified.

D. Beards shall not be worn. (Exceptions may be authorized for brief periods of time for medical reasons or special occasions).

SECTION 7. ALCOHOL AND DRUG ABUSE POLICY

A. PURPOSE

It is the policy of the City of Ontario to maintain a safe, healthful and productive work environment for all employees. This policy provides guidelines for the detection and deterrence of alcohol and drug abuse. It also outlines the responsibilities of City management personnel and employees. To that end the City will act to eliminate any substance abuse (alcohol, illegal drugs, prescription drugs or any other substance which would impair an employee's ability to safely and effectively perform the functions of the particular job) which increases the potential for accidents, absenteeism, substandard performance, poor employee morale or damage to the City's reputation. All persons covered by this policy should be aware that violations of the policy may result in discipline, up to and including termination.

In recognition of the serious duty entrusted to the employees of the City, with knowledge that drugs and alcohol do hinder a person's ability to perform duties safely and effectively, the following policy against drug and alcohol abuse is hereby adopted by the City.

B. POLICY

It is the City policy that employees shall not report to work under the influence of alcohol or drugs, possess, while on duty or on "standby" or utilize such substances while they are subject to City duty, sell or provide drugs or alcohol to any other employee or to any person while such employee is on duty or subject to being called, or have their ability to work impaired as a result of the use of alcohol or drugs.

Medication or drugs are defined as wither "over the counter" drugs or drugs specifically prescribed for the employee. While use of medications or drugs is not per se a violation of this policy, failure by the employee to notify his/her supervisor, before beginning work, when taking medications or drugs which may interfere with the safe and effective performance of duties or operation of City equipment can result in discipline, up to and including termination. In the event there is a question regarding an employee's ability to safely and effectively perform assigned duties while using such medications or drugs, clearance from a qualified physician will be required.

The City and the Unions/Associations have established a voluntary Employee Assistance Program (EAP) to assist most employees who voluntarily seek help for alcohol or drug problems. Employees should contact their supervisors for additional information.

The City reserves the right to search, when there is "reasonable suspicion" (see Section E, Subsection 2) that an employee may have a substance in his or her possession, without employee consent, all areas and property in which the City maintains joint control with the employee or full control. Otherwise, the City may notify the appropriate law enforcement agency that an employee may have illegal drugs in his or her possession or in an area not jointly or fully controlled by the City.

Violations of this policy shall be grounds for disciplinary action, up to and including discharge. Refusal to submit immediately to an alcohol and/or drug analysis when requested by the City management or law enforcement personnel may constitute insubordination and may be grounds for discipline up to and including termination.

Employees reasonably believed to be under the influence of alcohol or drugs shall be prevented from engaging in further work and will be requested to remain at the work site for a reasonable time until a supervisor, Management level employee or law enforcement representative can transport the employee

from the work site.

C. APPLICATION

This policy applies to all employees of the City. This policy applies to alcohol and to all substances, drugs, or medications, legal or illegal, which could impair an employee's ability to effectively and safely perform the functions of the job.

D. EMPLOYEE RESPONSIBILITIES

An employee must:

1. Not report to work or be subject to duty while his/her ability to perform job duties is impaired due to alcohol or drug use;

2. Not possess or use, alcohol or drugs (illegal drugs and prescription drugs not prescribed for the employee) during working hours or while subject do duty, or at any time while on City property;

3. Not directly or through a third party sell or provide drugs or alcohol to any person or to any other employee while either employee or both employees are on duty or on standby duty;

4. Submit immediately to an alcohol and drug analysis when requested by their supervisor when there is a "reasonable suspicion" (see E (2) below) that they are under the influence of drugs or alcohol or be faced with discipline.

5. Notify his/her supervisor, before beginning work, when taking any medications or drugs, prescription or non-prescription, which may interfere with the safe and effective performance of duties or operation of City equipment; and

6. Provide within 24 hours of request evidence of a current valid prescription for any drug or medication identified when a drug screen/analysis is positive. The prescription must be in the employee's name.

E. MANAGEMENT RESPONSIBILITIES AND GUIDELINES

1. Managers and supervisors are responsible for consistent enforcement of this policy.

2. Managers and supervisors may request that an employee submit to a drug and/or alcohol analysis when a manager or supervisor has a reasonable suspicion that an employee is intoxicated or under the

influence of drugs or alcohol. "Reasonable suspicion" is a belief based on objective and articulable facts sufficient to lead a reasonable prudent supervisor to suspect that an employee is under the influence of drugs or alcohol so that the employee's ability to perform the functions of the job is impaired or so that the employee's ability to perform his/her job safely is reduced.
For example, any of the following, alone or in combination, may constitute reasonable suspicion:

(a) Slurred speech;

(b) Alcohol on breath;

(c) Inability to walk a straight line;

(d) An accident involving City property where it appears that the employee is at fault;

(e) Physical or verbal altercations initiated by the employee;

(f) Behavior which is so unusual for that employee that it warrants summoning a supervisor or anyone else with authority;

(g) Possession of alcohol or illegal drugs;

3. Any manager or supervisor requesting an employee to submit to a drug and/or alcohol analysis should document in writing the facts constituting reasonable suspicion that the employee in question is intoxicated or under the influence of drugs.

4. If possible, any manager or supervisor should get the approval of the Personnel Director (in the case of a disciplinary action) or the Risk Manager (in the case of accident) prior to ordering an employee to submit to a drug and/or alcohol analysis.

5. Any manager or supervisor encountering an employee who refuses to submit to a drug and/or alcohol analysis upon request shall remind the employee of the requirements and consequences of this policy. Any employee refusing to submit to a drug and/or alcohol test shall not be forced to submit to such testing. The manager or supervisor should request the employee to remain at the work site for a reasonable time until a supervisor management-level employee or law enforcement representative can transport the employee.

6. Managers and supervisors shall not physically search employees.

7. Managers and supervisors shall notify the appropriate law enforcement agency when they have reasonable suspicion to believe that an employee may have illegal drugs in his or her possession or in an area not jointly or fully controlled by the City.

8. Managers and supervisors shall not confiscate, without the employee's consent, prescription drugs or medications from an employee who has a prescription.

F. PHYSICAL EXAMINATION AND PROCEDURE

The drug and/or alcohol analysis may test for any substance which could impair an employee's ability to effectively and safely perform the functions of his/her job, including, but not limited to prescription medications, heroin, cocaine, morphine and its derivatives, P.C.P., methadone, barbiturates, amphetamines, marijuana and other cannabinoids.

G. RESULTS OF DRUG AND/OR ALCOHOL ANALYSIS

1. A positive result from a drug and/or alcohol analysis may result in disciplinary action, up to and including discharge.

2. If the drug screen is positive at any physical, the employee must provide within 24 hours of request a valid current prescription for the drug identified in the drug screen. The prescription must be in the employee's name. If the employee does not have a valid prescription, or if the prescription is not in the employee's name, or if the employee has not previously notified his or her supervisor, the employee will be subject to disciplinary action.

3. If an alcohol or drug analysis is positive for alcohol or drugs, the City shall conduct an investigation to gather all facts. The decision to discipline or discharge will be carried out in conformance with the City's pertinent discipline procedures. An employee may request another alcohol or drug analysis through another source at his/her own expense.

H. CONFIDENTIALITY

Positive laboratory reports or test results shall appear in an employee's personnel file. Information of this nature, however, will be included in a separate confidential medical folder contained within the employee's personnel file. The reports or test results may be disclosed to City management on a strictly need-to-know basis and to the tested employee upon request. Disclosures, without patient consent, may also occur when: (1) the information is compelled by law or by judicial or administrative process; (2) the information has been placed at issue in a formal dispute

between the employer and employee; (3) the information is to be used in administering an employee benefit plan; (4) the information is needed by medical personnel for the diagnosis or treatment of the patient who is unable to authorize disclosure.

SECTION 8. SMOKING RESTRICTIONS

A. Any non-smoking employee may object to his or her supervisor about smoke in his or her work place. Using already available means of ventilation or separation of partitions of office space, the supervisor shall attempt to reach a reasonable accommodation, insofar as possible, between the preferences of non-smoking employees. However, the supervisor is not required to make any expenditures or structural changes to accommodate the preferences of non-smoking or smoking employees.

B. If an accommodation which is satisfactory to all affected non-smoking employees cannot be reached in any given office work place, the preferences of the non-smoking employees shall prevail and the supervisor shall prohibit smoking in that office work place. Where the supervisor prohibits smoking in an office work place, the area in which smoking is prohibited shall be posted as a no-smoking area with signs.

The smoking policies shall be announced within three (3) weeks of adoption to all employees working in the office work place, and shall be posted conspicuously in the office work place.

* (Unit 2 - Fire)

New employees hired into all classifications represented by the Union from eligibility lists established after January 1, 1988, will be required to remain non-smokers throughout their employment as a member of the Ontario Fire Department. A non-smoker shall not smoke or use any tobacco product, either on or off duty while employed. An affidavit signed on a periodic basis by the employee shall be used to verify continued non-smoking status.

SECTION 9. UNEXCUSED ABSENCE

An absence from work or three (3) consecutive working days without notifying the city, except when the failure to notify work is due to circumstances beyond the control of the employee, shall constitute an unexcused absence. The city shall s end a written notice to the employee at the employee's last known address, notifying the employee that he/she has lost seniority and his/her employment has been terminated.

RULE XXI. RULE MAKING AUTHORITY

A department head may adopt and administer personnel regulations which are supplementary to, and not inconsistent with, the personnel rules and regulations of the City of Ontario.

RULE XXII. LOYALTY OATH

Before any person can be appointed to a position in the city, the following oath is required:

OATH OR AFFIRMATION OF ALLEGIANCE
FOR CIVIL DEFENSE WORKERS AND PUBLIC EMPLOYEES

I,_____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

RULE XXIII. CODE OF ETHICS

SECTION 1. DECLARATION OF POLICY

The proper operation of democratic government requires that public officials and employees be independent, impartial, and responsible to the people; that governmental decisions and policy be made in the proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals, there is hereby established a Code of Ethics for all officials and employees, whether elected or appointed, paid or unpaid. The purpose of this Code is to establish ethical standards of conduct for all such officials and employees by setting forth those acts or actions that are incompatible with the best interests of the city and by directing disclosure by such officials and employees of private financial or other interests in matters affecting the city. The provisions and purpose of this Code and such rules and regulations as may be established are hereby declared to be in the best interests of the City of Ontario.

SECTION 2. RESPONSIBILITIES OF PUBLIC OFFICE

Public officials and employees are agents of public purpose and hold office for the benefit of the public. They are bound to uphold the Constitution of the Unites States and the Constitution of this State and carry out impartially the laws of the nation, state, and municipality and thus to foster respect for all government. They are bound to observe in their official acts the highest standards of morality and to discharge faithfully the duties of their office regardless of personal considerations, recognizing that the public interest must be their primary concern. Their conduct in both their official and private affairs should be above reproach.

SECTION 3. DEDICATED SERVICE

All officials and employees of the municipality should be loyal to the political objectives expressed by the electorate and the programs developed to attain those objectives. Appointive officials and employees should adhere to the rules of work and performance established as the standard for their positions by the appropriate authority.

Officials and employees should not exceed their authority or breach the law or ask others to do so, and they should work in full cooperation with other public officials and employees unless prohibited from so doing by law or by officially recognized confidentiality of their work.

SECTION 4. FAIR AND EQUAL TREATMENT

A. Interest in Appointments. Canvassing of members of the Council, directly or indirectly, in order to obtain preferential consideration in connection with any appointment to the municipal service shall disqualify the candidate for appointment except with reference to positions filled by appointment by the Council.

B. Use of Public Property No official or employee shall request or permit the use of city-owned vehicles, equipment, materials, or property for personal convenience or profit, except when such services are available to the public generally or are provided as municipal policy for the use of such official or employee in the conduct of official business.

C. Obligations to Citizens. No official or employee shall grant any special consideration, treatment, or advantage to any citizen beyond that which is available to every other citizen.

SECTION 5. CONFLICT OF INTEREST

No council member or other official or employee, whether paid or unpaid, shall engage in any business or transaction or shall have a financial or other personal interest, direct or indirect; which is incompatible with the proper discharge of his/her official duties in the public interest or would tend to impair his/her independence of judgement or action in the performance of official duties. Personal as distinguished from financial interest includes an interest arising from blood or marriage relationships or close business or political association.

Specific conflicts of interest are enumerated below for the guidance of officials or employees:

A. Incompatible Employment. No council member or other official or employee shall engage in or accept private employment or render services for private interests when such employment or service is incompatible with the proper discharge of his/her official duties or would tend to impair his/her independence of judgment or action in the performance of his/her official duties.

B. Disclosure of Confidential Information. No council member or other official or employee shall, without proper legal authorization disclose confidential information concerning the property, government, or affairs of the city. Nor shall he/she use such information to advance the financial or other private interest of himself/herself or others.

C. Gifts and Favors. No council member or other official or employee shall accept any valuable gift, whether in the form of service, loan, thing, or promise, from any person, firm, or corporation which to his/her knowledge is

interested directly or indirectly in any manner whatsoever in business dealings with the city; nor shall any such official or employee (1) accept any gift, favor, or thing of value that may tend to influence him/her in the discharge of duties, or (2) grant in the discharge of duties any improper favor, service, or thing of value.

D. Representing Private Interests Before City Agencies or Courts. No council member or other official or employee whose salary is paid in whole or in party by the city shall appear in behalf of private interests before any agency of the city. He/she shall not represent private interests in any action or proceeding against the interests of the city in any litigation to which the city is a party.

A council member may appear before city agencies on behalf of constituents in the course of his/her duties as a representative of the electorate or in the performance of public or civic obligations. However, no council member or other official or employee shall accept a retainer or compensation that is contingent upon a specific action by a city agency.

E. Contracts With the City. Any council member or other official or employee who has a substantial or controlling financial interest in any business entity, transaction, or contract with the city, or in the sale of real estate, materials, supplies, or services to the city, shall make known to the proper authority such interest in any matter on which he/she may be called to act in his/her official capacity. He/she shall refrain from voting upon or otherwise participating in the transaction or the making of such contract or sale.

A council member or other official or employee shall not be deemed interested in any contract or purchase or sale of land or other thing of value unless such contract or sale is approved, awarded, entered into, or authorized by him/her in his/her official capacity.

F. Disclosure of Interest in Legislation. A council member who has a financial or other private interest in any legislation shall disclose on the records of the Council or other appropriate authority the nature and extent of such interest. This provision shall not apply if the council member disqualifies himself/herself from voting.

Any other official or employee who has a financial or other private interest, and who participates in discussion with or gives an official opinion to the Council, shall disclose on the records of the Council or other appropriate authority the nature and extent of such interest.

SECTION 6. POLITICAL ACTIVITY

No appointive official or employee in the administrative service shall use the prestige of his/her position in behalf of any political party.

No appointive official or employee in the administrative service shall orally, by letter, or otherwise, solicit or be in any manner concerned in soliciting any assessment, subscription, or contribution to any political party; nor shall he/she be a party to such solicitation by others. Such appointed officials and employees shall not take an active part in political campaigns for candidates in city elections.

No official or employee, whether elected or appointed, shall promise an appointment to any municipal position as a reward for any political activity.

SECTION 7. APPLICABILITY OF CODE

When a council member or other official or employee has doubt as to the applicability of a provision of this Code to a particular situation, he/she should apply to the Ontario City Council for interpretation. The council member or other official or employee shall have the opportunity to present his/her interpretation of the facts at issue and of the applicable provision(s) of the Code before an advisory decision is made. This Code shall be operative in all instances covered by its provisions except when superseded by an applicable statutory or charter provision and statutory or charter provision is discretionary but determined to be more appropriate or desirable.

SECTION 8. SANCTIONS

Violations of any provisions of this Code should raise conscientious questions for the council member or other official or employee concerned as to whether voluntary resignation or other action is indicated to promote the best interests of the city. Violation by a city employee may constitute a cause for suspension, removal from employment, or other disciplinary action.

RULE XXIV. EMPLOYER-EMPLOYEE RELATIONS

SECTION 1. EMPLOYER-EMPLOYEE RELATIONS RULES AND REGULATIONS

A. DEFINITIONS

As used in these rules and regulations, the following terms shall have the meanings indicated:

1. City - means the City of Ontario, a municipal corporation; and where appropriate herein, "city" refers to the City Council, the governing body of said city, or any duly authorized management employee as herein defined.

2. Consult or Consultation in Good Faith - means to communicate orally or in writing for the purpose of presenting and obtaining views or advising of intended actions.

3. Employee - means any person regularly employed by the city except those persons elected by popular vote.

4. Employee, Confidential - means an employee who is privy to decisions of city management affecting employer-employee relations.

5. Employee, Management - means any employee having significant responsibilities for formulating and administering city policies and programs, including, but not limited to, the chief executive officer and department heads.

6. Employee, Professional - means employees engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction including, but not limited to attorneys, physicians, registered nurses, engineers, architects, teachers, and various types of physical, chemical and biological scientists, firemen and policemen.

7. Employee, Supervisory - means any employee having authority to exercise independent judgement to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or having the responsibility to direct them, or to adjust their

grievances, or effectively recommend such action if in connection with the foregoing; the exercise of such authority is not of merely routine or clerical nature, but requires the use of independent judgement.

8. Employee Organization - means any organization which includes employees of the city and which has as one of its primary purposes representing such employees in their employment relations with the city.

9. Employer-Employee Relations - means the relationship between the city and its employees and their employee organizations, or when used in a general sense, the relationship between city management and employees or employee organizations.

10. Fact-Finding - is the placing of issues in dispute before an impartial, mutually agreed upon third party who then gives an advisory report and recommendations on all issues presented to him.

11. Impasse - means (1) deadlock in the annual (or periodical) discussions between a majority representative and the city over any matters concerning which they are required to meet and confer in good faith, or over the scope of such subject matter; or (2) any unresolved complaint by an affected employee organization, advanced in good faith, concerning a decision of the City Manager in accordance with Sections 8, 9, 10, and 11 of these rules and regulations.

12. Majority Representative - means an employee organization, or its duly authorized representative, that has been granted formal recognition by the City Manager as representing the majority of employees in an appropriate unit.

13. Mediation or Conciliation - means the efforts of an impartial, mutually agreed upon third person, or persons, functioning as intermediaries, to assist the parties in reaching a voluntary resolution to an impasse, through interpretation, suggestions and advice. Mediation and conciliation are interchangeable terms.

14. Meet and Confer in Good Faith (sometimes referred to herein as "meet and confer" or "meeting and conferring") - means performance by duly authorized city representatives and duly authorized representatives of an employee organization recognized as the majority representative of their mutual obligation to meet at reasonable times and to confer in good faith regarding matters within the scope of representation

including wages, hours, and other terms and conditions of employment in an effort to (1) reach agreement on those matters within the authority of such representatives, and (2) reach agreement on what will be recommended to the City Council on those matters within the decision-making authority of the City Council.

15. City Manager or Municipal Employee Relations Officer - means the city's principal representative in all matters of employer-employee relations as set forth in Ontario Municipal Code, Title 2, Chapter 3, Article 1, or his duly authorized representative.

16. Peace Officer - as this term is defined in Section 830, California Penal Code and as applied to sworn personnel in the Ontario Police and Fire Departments.

17. Recognized Employee Organizations - means an employee organization which has been acknowledged by the City Manager as an employee organization that represents employees of the City. The rights accompanying recognition are either:

    (a) Formal Recognition - which is the right to meet and confer in good faith as the majority representative in an appropriate unit; or

    (b) Informal Recognition - which is the right to consultation in good faith by all recognized employee organizations.

18. Scope of Representation - means all matters relating to employment conditions and employer-employee relations including, but not limited to, wages, hours, and other terms and conditions of employment.

B. EMPLOYEE RIGHTS

Employees of the City shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations including, but not limited to, wages, hours, and other terms and conditions of employment. Employees of the City also shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the City. No employee shall be interfered with, intimidated, restrained, coerced, or discriminated against because of the exercise of these rights.

C. CITY RIGHTS

The rights of the city include, but are not limited to, the exclusive right to determine the mission of its constituent departments, commissions, and boards; set standards of service; determine the procedure and standards of selection for employment and promotion; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of government operations; determine the methods, means, and personnel by which government operations are to be conducted; determine the content of job classifications; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work.

D. MEET AND CONFER IN GOOD FAITH - SCOPE

1. The City, through its representatives, shall meet and confer in good faith with representatives of formally recognized employee organizations with majority representation rights regarding matters within the scope of representation including wages, hours, and other terms and conditions of employment within the appropriate unit.

2. The City shall not be required to meet and confer in good faith on any subject preempted by Federal or State law, nor shall it be required to meet and confer in good faith on employee or City rights as defined in Subsections B and C of Section 1. Any changes that may be deemed necessary from time to time in these rules and regulations shall be excluded from the scope of meeting and conferring.

   The City, through its representatives, and representatives of recognized employee associations may, by mutual agreement, meet and confer on matters of employment nor prohibited by these rules and regulations.

3. The City will make available to employee organizations such non-confidential information pertaining to employment relations as is contained in the public records of the agency subject to the limitations and conditions set forth in these rules and regulations and Government Code Sections 6250-6260.

Such information shall be made available during regular office hours in accordance with the City's rules and procedures for making public records available and after payment of reasonable costs, where applicable.

To facilitate the meeting and conferring process, the City Manager shall provide to recognized employee organizations concerned, the published data it regularly has available concerning subjects under consideration in meeting and conferring including data gathered concerning salaries and other terms and conditions of employment provided by comparable public and private employers, provided that when such data is gathered on a promise to keep its source confidential, the data may be provided in statistical summaries but the sources shall not be revealed.

Nothing in this rule shall be construed to require disclosure of records that are:

(a) Personnel, medical and similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy or be contrary to merit system principles;

(b) Working papers or memoranda which are not retained in the ordinary course of business or any records where the public interest is served by not making the record available clearly outweighs the public interest served by disclosure of the record;

(c) Records pertaining to pending litigations to which the City is a party, or to claims or appeals which have not been settled;

(d) Nothing in this rule shall be construed as requiring the City to do research for an inquirer or to do programming or assemble data in a manner other than usually done by the agency.

E. CONSULTATION IN GOOD FAITH - SCOPE

All matters affecting employer-employee relations, including those that are not subject to meeting and conferring, are subject to consultation. The City, through its representatives, shall consult in good faith with representatives of all recognized employee organizations on employer-employee relations matters which affect them. Consultation consists of communicating verbally or in writing between the City Manager and representatives of recognized employee organizations that are affected on matters relating to employer-

employee relations before any action is taken.

F. ADVANCE NOTICE

Reasonable written notice shall be given to each recognized employee organization affected by any ordinance, rule, resolution, or regulations directly relating to matters within the scope of representation proposed to be adopted by the City Council or by any board or commission of the City, and shall be given the opportunity to meet with such body prior to adoption. Representatives of the recognized employee groups shall be given reasonable time off from their duties to meet and confer on all matters within the scope of meeting and conferring.

For purposes of attending scheduled meetings with the City Manager or other management representatives on subjects within the scope of presentation during regular work hours without loss of compensation, the formally recognized employee organization may select two employee representatives without regard to the size of the organization. Where circumstances warrant, the City Manager may approve the attendance at such meetings of additional employee representatives with or without loss of compensation. The employee organization shall, whenever practicable, submit the names of all such employee representatives to the City Manager at least two working days in advance of such meetings. Provided further:

1. That no employee representative shall leave his or her duty or work station or assignment without specific approval of the department head or other authorized City management official.

2. That any such meeting is subject to scheduling by City management in a manner consistent with operating needs and work schedules.

   Nothing provided herein, however, shall limit or restrict City management from scheduling such meetings before or after regular duty or work hours under appropriate circumstances.

G. PRIVILEGES GRANTED TO RECOGNIZED EMPLOYEE GROUPS

1. Access to Work Locations

   Reasonable access to employee work locations shall be granted officers of recognized employee organizations and their officially designated representatives for the purpose of processing grievances or contacting members of the organization concerning business within

the scope of representation. Such officers or representatives shall not enter any work location without the consent of the department head or in the absence of the department head, his/her designated representative or the Personnel Director. Access shall be restricted so as not to interfere with the normal operations of the department or with established safety or security requirements.

2. Use of City Facilities

Recognized employee organizations may, with the prior approval of the City Manager, be granted the use of City facilities during non-work hours for meetings of City employees provided space is available and provided further such meetings are not used for organizational activities or membership drives of City employees. However, City facilities may be used by employee organizations representing Fire and Police employees provided that such meetings do not interfere with the carrying out of their duties and are subject to the limitations stated above. All such requests for City facilities shall be in writing and shall state the purpose or purposes of the meeting. The City reserves the right to assess reasonable charges for the use of such facilities.

The use of City equipment other than items normally used in the conduct of business meetings, such as desks, chairs, ashtrays, and blackboards is strictly prohibited, the presence of such equipment in approved City facilities notwithstanding.

H. PETITION FOR RECOGNITION

There are two levels of employee organization recognition -formal and informal. The recognition requirements of each are set forth below:

1. Formal Recognition -the right of a majority representative in an appropriate unit, recognized in accordance with the procedures set forth in these rules and regulations, to meet and confer in good faith on all matters within the scope of representation. An employee organization that seeks formal recognition shall file a petition containing the information outlined below with the City Manager, in accordance with the procedures set forth in Section 13.

   (a) Name and address of the employee organization.

   (b) Names and titles of its officers.

(c) Names of employee organization representatives who are authorized to speak on behalf of its members.

(d) A statement that the employee organization has, as one of its primary purposes, representing employees in their employment relations with the City.

(e) A statement whether the employee organization is a chapter or local of, or affiliated directly or indirectly in any manner with a regional or state, or national or international organization, and if so, the name and address of each of such regional, state, national, or international organization.

(f) Copies of the employee organization's constitution and bylaws certified by the local organization.

(g) A designation of those persons, not exceeding two in number, and their addresses, to whom notice sent by regular United States mail will be deemed sufficient notice on the employee organization for any purpose other than legal process. In the event one of the individuals designated to receive notices from the City will be on a leave of absence for more than a week, the affected organization may appoint an alternate to receive notices during his absence. It will be the responsibility of the organization to notify the City Manager in writing whenever an alternate is to be appointed and for what period of time.

(h) A statement that the employee organization has no restriction on membership based on race, color, creed, sex or national origin.

(i) The job classifications or titles of employees in the unit claimed to be appropriate and the approximate number of member employees therein.

(j) A statement that the employee organization has in its possession written proof, dated within six months of the date upon which the petition is filed, to establish that employees in the unit claimed to be appropriate have designated the employee organization to represent them in their employment relations with the City. Such written proof shall be submitted for confirmation to the City Manager or a mutually agreed upon disinterested third party.

(k) A request that the City Manager recognize the employee organization as the majority representative of the employees in the unit claimed to be appropriate for the purpose of meeting and conferring in good faith on all matters within the scope of representation.

2. Informal Recognition -the right to consult in good faith. An employee organization that seeks recognition for purposes of consultation in good faith shall file a petition with the City Manager containing the following information and documentation:

(a) All of the information enumerated in 1 (a) through (i) in the above section, inclusive.

(b) A statement that the employee organization has in its possession written proof, dated within six months of the date upon which the petition is filed, to establish that employees have designated the employee organization to represent them in their employment relations with the City. Such written proof shall be submitted for confirmation to the City Manager.

(c) A request that the City Manager recognize the employee organization for the purpose of consultation in good faith.

3. The petition, including all accompanying documents, shall be verified under oath by an official representative of the organization that the statements are true. All changes in such information shall be filed forthwith in like manner.

4. The City Manager shall grant formal recognition in writing to all employee organizations which have complied with 1 and 3 of Subsection H and have satisfied the requirements of 1 in Subsection I. Those organizations seeking informal recognition must comply with 2 and 3 of Subsection H. No employee may be represented by more than one recognized employee organization on all matters within the scope of representation and for the purposes of these rules and regulations.

I. REPRESENTATION PROCEEDINGS

1. Procedures for Determining Majority Representative

(a) An employee organization that seeks formal recognition as the majority representative in an appropriate unit shall file a Petition for Recognition with the City Manager containing all of the information set forth in Subsection H, accompanied by written proof that at least 30% of the employees in the unit claimed to be appropriate have designated the employee organization to represent them in their employment relations with the City. Upon receipt of the Petition for Recognition the City Manager shall determine whether:

(1) there has been compliance with the requirements of the Petition for Recognition, **and**

(2) the proposed unit is an appropriate unit. If an affirmative decision is made by the City Manager on the foregoing two matters, he shall give notice of such request for formal recognition to the employees in the unit and shall take no action on said request for 30 days thereafter; if either of the foregoing matters is not affirmatively determined, the City Manager shall inform the employee organization of the reasons therefor in writing.

(b) Within 30 days of the date notice to employees is given, any other employee organization (hereinafter referred to as the "challenging organization") may seek formal recognition in an overlapping unit by filing a Petition for Recognition provided, however, such challenging organization must submit written proof that it represents at least 30% of the employees in such unit. The City Manager shall hold a hearing on such overlapping petitions at which time all affected employee organizations shall be heard.

Thereafter, the City Manager shall determine the appropriate unit or units as between such proposed overlapping units in accordance with the criteria set forth in Subsection J of these rules and regulations.

(c) If the written proof submitted by the employee organization in the unit found to be appropriate establishes that it represents more than 50% of the employees in such unit, the City Manager may, at his discretion, grant formal recognition to such employee organization without a secret ballot election.

(d) When an employee organization in the unit found to be appropriate submits written proof that it represents 30% of the employees in such unit, and it does not qualify for or has not been granted recognition pursuant to paragraph (c) above, the City Manager shall arrange for a secret ballot election to be conducted by the City Clerk. All challenging organizations who have submitted written proof that they represent at least 10% of the employees in the unit found to be appropriate, and have submitted a Petition for Recognition as required by Subsection H of these rules and regulations shall be included on the ballot. The choice of "no organization" shall also be included on the ballot. Employees entitled to vote in such election shall be those persons regularly employed in permanent positions within the unit who were employed during the pay period immediately prior to the date which is 15 days before the election, including those who did not work during such period because of illness, vacation, or authorized leaves of absence and who are employed by the City in the same unit on the date of election. An employee organization shall be granted formal recognition following an election or run-off election if:

(1) that employee organization has received the vote of a numerical majority of all the employees voting provided that 60% of the employees in the appropriate unit have voted. In the event that 60% of the employees in the appropriate unit failed to vote, another election shall be scheduled within 90 days.

(2) In an election involving three or more choices, where none of the choices receives a majority of the valid votes cast, a run-off election shall be conducted between the two choices receiving the largest number of valid votes cast. The rules governing an initial election shall also apply to a run-off election.

2. Procedures for the Decertification of an Established Unit

(a) A petition for decertification alleging that an employee organization granted formal recognition is no longer the majority representative of the employees in an appropriate unit may be filed with the City Manager only during a period 180 days to 120 days prior to the expiration of a Memorandum of Understanding (i.e., if a Memorandum expired on July 1, the period when a decertification petition could be filed would extend from January 1 to March 3).

The petition for decertification may be filed by an employee, a group of employees or their representative, or an employee organization. The petition, including all accompanying documents, shall be verified, under oath, by the person signing it that its contents are true. It may be accompanied by a petition for recognition by a challenging organization. The petition for decertification shall contain the following information:

(1) The name, address, and telephone number of the petitioner and a designated representative authorized to receive notices or requests for further information.

(2) The name of the formally recognized employee organization.

(3) An allegation that the formally recognized employee organization no longer represents a majority of the employees in the appropriate unit and any other relevant and material facts.

(4) Written proof that at least 30% of the employees in the unit do not desire to be represented by the formally recognized employee organization. Such written proof shall be dated within six months of the date upon which the petition is filed and shall be submitted for confirmation to the City Manager.

(b) The City Manager shall arrange for a secret ballot election to determine if the formally recognized employee organization shall retain its recognition rights. The City Manager shall notify

the formally recognized employee organization, in writing, 30 calendar days prior to any election. The formally recognized employee organization shall be decertified if a majority of those casting valid ballots vote for decertification provided that 60% of the employees in the appropriate unit voted. Another election may be scheduled within 90 days.

3. Procedures for the Modification of an Established Unit

A petition for modification of an established unit may be filed by an employee organization with the City Manager during the period for filing a petition for decertification. The petition for modification shall contain all of the information set forth in Subsection H (1) of these rules and regulations along with a statement of all relevant facts in support of the proposed modified unit. The petition shall be accompanied by written proof that at least 50% of the employees within the proposed modified unit have designated the employee organization to represent them in their employment relations with the City.

The City Manager shall hold a hearing on the petition for modification at which time all affected employee organizations shall be notified by the City Manager 10 calendar days before any hearing is held. Thereafter, the City Manager shall determine the appropriate unit or units as between the existing unit and the proposed modified unit. If the City Manager determines that the proposed modified unit is the appropriate unit, he shall follow the procedures set forth in subsection "a" of this Section for determining formal recognition rights in such unit.

J. APPROPRIATE UNIT

The City Manager, after reviewing the petition filed by an employee organization seeking formal recognition as a majority representative, shall determine whether the proposed unit is an appropriate unit. The principal criterion in making this determination is whether there is a community of interest among such employees. The following factors, among others, are to be considered in making such determination:

1. Which unit will assure employees the fullest freedom in the exercise of their rights.

2. The history of employee relations:

(a) in the unit

(b) among other employees of the City

(c) in similar public employment

3. The effect of the unit on the efficient operation of the City and sound employer-employee relations.

4. The extent to which employees have common skills, working conditions, job duties, or similar educational requirements.

5. The effect on the existing classification structure of dividing a single classification among two or more units.

Provided, however, no unit shall be established solely on the basis of the extent to which employees in the proposed unit have organized.

K. RECOGNITION OF EMPLOYEE ORGANIZATIONS AS MAJORITY REPRESENTATIVES - FORMAL RECOGNITION

The City Manager shall:

1. Determine the majority representative of City employees in appropriate units such as Police, Fire, or Miscellaneous employees by arranging for a secret ballot election or by any other reasonable methods in accordance with the procedures outlined in Subsection I to ascertain the free choice of a majority of such employees.

   The employee organization found to represent a majority of the employees in an appropriate unit shall be granted formal recognition and is the only employee organization entitled to meet and confer in good faith on matters within the scope of representation for employees in such unit. This shall not preclude other recognized employee organizations, or individual employees from consulting with management representatives on employer-employee relations matters of concern to them.

2. Revoke the recognition rights of a majority representative which has been found by secret ballot election, or by any other reasonable method which is in accordance with Subsection I no longer to be the majority representatives.

L. PARTICULAR PROVISION FOR PEACE OFFICERS

Peace officers may form, join, participate in, and be represented by employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations as set forth in these rules and regulations. Such local, state, or national organizations must be composed solely of such police officers; be concerned solely and exclusively with the wages, hours, working conditions, welfare programs and advancement of the academic and vocational training in furtherance of the police profession; and cannot be subordinate to any other organization.

M. RESOLUTION OF IMPASSES

In the event an impasse is reached during the meeting and conferring process over any matters concerning which the City and recognized employee organizations are required to meet and confer in good faith, the matters in dispute will be settled in the following manner:

1. A mediator from the State of California Mediation/Conciliation Service will be selected by mutual agreement between the City and the recognized employee organization. If they are unable to agree, the mediator shall be chosen by the State of California Mediation/Conciliation Service from their staff. The mediator will assist in reconciling the dispute through interpretation, suggestion, and advice. The mediator will meet with the parties in private in an effort to reach a voluntary agreement on the matters in dispute.

   However, the mediator may make confidential oral recommendations to the parties jointly or individually at his own discretion. The powers of the mediator will be strictly limited to the mediator's efforts to assist the parties in reaching a voluntary accord. Cost of the mediator shall be shared equally by the parties.

2. In the event that any matter remains in dispute after mediation, the issue will be submitted to the City Council for its determination. Noting in this section shall preclude the City and recognized employee organization from invoking any other mutually agreeable procedure for the resolution of matters in dispute in the event settlement is not achieved through the above described mediation process.

N. CONSTRUCTION

1. Nothing in these rules and regulations shall be construed to deny any person or employee the rights granted by Federal and State laws.

2. The rights, powers, and authority of the City Council in all matters including the right to maintain any legal action, shall not be modified or restricted by these rules and regulations.

3. The procedures outlined in these rules and regulations are not intended to conflict with the provisions of Chapter 10, Division 4, Title 1 of the Government Code of the State of California (Sections 3500, et seq.) as amended in 1968.

SECTION 2. BARGAINING PROPOSAL PRESENTATIONS

The City and the bargaining representative must exercise its right to present bargaining proposals for a successor Agreement no earlier than 120 days prior to the expiration of this Agreement and no later than 90 days prior to the expiration of this Agreement.

SECTION 3. CITY RIGHTS AND RESPONSIBILITIES

A. THE RIGHTS OF THE CITY

The rights of the City include, but are not limited to:

1. The exclusive right to determine the mission of its constituent departments, commissions, and boards.

2. Set standards of service.

3. Determine the procedure and standards of selection for employment and promotion.

4. Direct its employees.

5. Relieve its employees from duty because of lack of work or for other legitimate reasons.

6. Maintain efficiency of government operations.

7. Determine the methods, means, and personnel by which government operations are to be conducted.

8. Determine the content of job classifications.

9. Take all necessary actions to carry out its mission in emergencies.

10. Exercise complete control and discretion over its organization and the technology of performing its work.

11. To discharge, suspend, demote, reprimand, withhold salary increases and benefits, or otherwise discipline employees for cause.

12. To establish reasonable employee performance standards including, but not limited to, quality and quantity standards; and to require compliance herewith.

B. AUTHORITY OF THIRD PARTY NEUTRAL

Each issue decided by a third party neutral will stand on its own merits and will not be used as a precedent by any other third party neutral in deciding any issue before him or her.

C. IMPACT OF CITY RIGHTS

Where required by law the City agrees prior to implementation to meet and confer with the Union over the impact of the exercise of a City right upon wages, hours, and other terms and conditions of employment of its members unless the impact consequences of the exercise of a management right upon the union members is provided for in the Memorandum of Understanding, Personnel Rules and Regulations, or Departmental Rules and Regulations.

D. MANAGEMENT RIGHTS

There are no provisions in the Memorandum of Understanding that shall be deemed to limit or curtail the City in any way the exercise of the rights, powers, and authority which the City had prior to entering into such understanding unless and only to the extent that the provisions of the Memorandum of Understanding specifically curtail or limit such rights, powers, and authority.

SECTION 4. SUBCONTRACTING WORK

* (Unit 6 - Miscellaneous Services)

In the event the City plans to subcontract work or service normally performed by bargaining unit employees which will result in these employees having their work week reduced or in layoffs, the City and the Union will meet and consult to review possibilities for absorption of affected employees in the Representation Unit into other jobs in the City's service or with the subcontractor.

RULE XXV. DISCIPLINARY PROCEDURE

A. The City shall afford permanent employees the procedural due process safeguards as set out in the published decisions of California courts.

B. An employee may have the right to union representation when the employee reasonably anticipates that such a meeting is for the purpose of disciplining the employee or is to obtain facts to support disciplinary action that is probably or that is being seriously considered.

C. The following disciplinary procedure must be used for all serious disciplinary actions involving permanent fulltime employees BEFORE the actions go into effect. Basically, the disciplinary procedure provides that:

1. The employee shall receive notice of the proposed disciplinary action. Normally, one (1) week will be considered the minimum time necessary to give notice for a 1-3 day suspension and two (2) weeks for all other disciplinary actions. In the case of employees in Unit 2 (Fire) suspension shall not exceed thirty (30) days without pay nor shall it exceed more than thirty (30) days in any fiscal year. Normally, five (5) working days prior to a 1/2 shift to a 1 1/2 shift suspension, and ten (10) working days prior to a 2 shift suspension or above, a suspended employee will receive a written copy of the charges against him/her.

2. The notice must contain the reasons and the charges upon which the proposed action is based.

3. The notice must also contain a statement of the events or circumstances upon which the action is based.

4. The employee must be given the materials, if any, upon which the action is based.

5. The employee must be given the right, either orally or in writing, to respond to the department head proposing the action for all disciplinary action except discharge. Any response relative to discharge will be directed to the City Manager.

6. This disciplinary procedure should be used for all serious disciplinary actions which are normally considered (1) demotions, (2) discharges, (3) reductions in pay, and (4) suspensions.

The above procedure may be deviated from in circumstances where there is a need for immediate disciplinary action. In such cases, an employee may be ordered off the job without pay if his/her conduct imperils the safety or welfare of, the public, other employees, or said employee (i.e., drunkenness, violence, gross insubordination).

* (Unit 6 - Miscellaneous Services)

Where specific misconduct is stated as the reason for termination, a probationary employee upon written request made prior to the effective date of the termination, shall be given a hearing, so that the probationary employee may have an opportunity to clear his/her name before the termination becomes effective, provided, however, that nothing in this subsection shall effect the right of the City to terminate a probationary employee either with cause or without cause.

RULE XXVI. HOURS OF WORK

SECTION 1. WORK PERIODS/SCHEDULES

The work week shall normally consist of 40 hours of work within a period of seven consecutive days or 80 hrs of work within 14 days, except as otherwise provided by law. All bargaining unit employees shall be scheduled to work beginning at regular starting times and ending at regular quitting times. Work schedules shall be communicated to each affected employee indicating shift days and hours.

Department Heads shall establish such work schedules as may be necessary for the efficient and economical provision of services for the public, and to make such adjustment in work shifts as are, from time to time, required.

* (Unit 6 - Miscellaneous Services)

The City shall give the employee and the Union appropriate notice of any proposed changes in scheduled work shifts prior to implementation. Whenever possible, said notice shall be within 24 hours or more of said change in work schedule prior to implementation. Regular work schedules shall not be changed on the day of said change in work schedule for the purpose of avoiding payment of overtime.

* (Unit 2 - Fire)

A. 24 HOUR WORK SHIFT SCHEDULE

Unit employees assigned to work the twenty-four (24) hour work shift scheduled shall begin at 0700 hours and terminate work at 0700 hours the following day. The City shall maintain the 56 hour shift schedule as it relates to days on/days off.

The beginning and ending dates and times for the purposes of establishing the twenty-four (24) day work periods for each platoon shall be set forth by Fire Department management.

The work period for bargaining unit employees assigned to a daily work schedule of twenty-four (24) hours shall be fixed and regularly recurring work period of twenty-four (24) consecutive twenty-four (24) hour days (576 hours).

Time Worked is defined as the maximum number of hours worked per each twenty-four (24) day work period paid at the regular rate of pay shall be 182

hours, except as provided in the following paragraph.

Non-Work Time is defined by the following situations which shall not be considered time worked toward the twenty-four (24) day work period for determining time worked in excess of 182 hours:

1. Leaves of absence (Military, Jury, Leave Without Pay, Personal Leave, or Paternity Leave.)

2. All travel to work and returning home.

3. All time in voluntary off-duty training.

    * Scheduled assigned training - would provide for consideration of time worked for travel time and scheduled class time.

    * Where an individual voluntarily attends a budgeted Fire Department class, all time would be considered non-work time; however, any scheduled shifts within that period would be recorded as Leave for Department Business.

4. Dock Time - that non-work time charged against an employee for unauthorized absence, tardiness, or other absence without pay.

    * Dock Time shall not be chargeable against authorized leave times.

    * Dock Time shall be charged in increments pursuant to Rule IV Section 8, Subsection B, 2 (Unit 2 - Fire).

Time Trades (Shift Trading)

The trading of work time between employees shall be permitted under the following conditions:

1. Traded time worked shall not be counted as additional hours worked per each work period for determining time worked in excess of 182 hours.

2. Trading time is done voluntarily by the participating employees.

3. Trading time may be for any shift, or one (1) hour minimum thereof, of an employee's regular work schedule. Paybacks shall be at the same time increment as the original exchange.

4. Traded time shall be between two (2) employees only. Multiple personnel trades are not permitted.

5. The time during which time is traded and paid back is within the designated calendar year.

6. Trading time is documented and is approved by Fire Department supervision.

7. Trading time is restricted to a maximum of two hundred (200) hours of accrued time owed at any time within the calendar year. Recordkeeping to carry out this policy will be done by Fire Department management.

8. Time owed due to trades shall be paid back prior to transfers, promotions, or change in shift assignments for any party.

9. Additional procedures as set forth in the Departmental Trade Time Policies and Procedures as agreed upon by the Fire Department Management and representative.

Early Relief

The common practice of relieving employees on the previous shift prior to the scheduled starting time shall not have the effect of increasing the number of compensable hours of work for employees.

1. Any early relief amongst employees shall be done voluntarily by the participating employees.

2. Early Relief shall not be counted as additional time worked per each work period.

3. Early Relief may be for a period of time ranging from eleven (11) minutes, up to a maximum of (1) hour.

4. Early Relief is documented in the appropriate Fire Company Log Book by the supervisor of the individual being relieved.

5. Early Relief shall be infrequent and shall not be permitted as a routine or continual practice amongst individual employees over a period of time.

B. 40 Hour Work Week Schedule

Unit employees assigned to work the forty (40) hour work week schedule shall be assigned daily starting and terminating work time approved by Fire management.

The seven (7) day work period shall begin on Sunday at 07:00:00 a.m. and end on Sunday at 06:59:59: a.m.

The work period for unit employees assigned to work the forty (40) hour work week schedule shall be a fixed and regularly recurring period of 168 consecutive hours consisting of seven (7) consecutive twenty-four (24) hour periods.

Hours Worked

The maximum number of hours worked per each seven (7) day work period shall be forty (40) hours at the regular rate of pay, inclusive of breaks and exclusive of:

1. Meal time.

2. Leave of absence (Military, Jury, Leave Without Pay, Personal Leave, or Paternity Leave.)

3. All travel to work and returning home.

4. All time in voluntary off-duty training with the following exceptions:

   * Scheduled assigned training - would provide for consideration of time worked for travel time and scheduled class time.

   * Where individual voluntarily attends a budgeted Fire Department class, all time would be considered non-work time; however, any scheduled shifts within that period would be recorded as Leave for Department Business.

5. All time worked for which employees have already been paid at one and one half (1 1/2) times the regular rate of pay or as otherwise set forth in this article within their 168 hours in a seven (7) day work period (i.e., emergency overtime, special detail overtime).

6. Dock time - that non-work time charged against an employee for unauthorized absence, tardiness, or other absence without pay.

    * Dock Time shall not be chargeable against authorized leave times.

    * Dock Time shall be charged in increments pursuant to Rule IV, Section 8, Subsection B, 2 (Unit 2-Fire).

Meal Time

All employees assigned to work the forty (40) hour work week schedule shall be entitled to one (1) meal time for eight (8) or more consecutive hours worked.

All meal time taken is considered non-work time and to be without pay. The schedule for meal breaks shall be determined by management, taking into consideration the continuity of services provided to the public, and the convenience of the employee.

In no case will meal breaks be permitted to exceed one (1) hour, or can they be taken at the beginning or end of a work schedule.

Breaks - Rest Periods

Employees assigned to the forty (40) hour work week schedule may receive two (2) break-rest periods for each eight (8) hour day actually worked, and a break-rest period of fifteen (15) minutes for each four (4) consecutive hours of overtime worked. Break-rest periods are a benefit and not a right, and time must be earned as any other benefit and is computed at the rate of fifteen (15) minutes per four (4) hours worked, or major fraction thereof. The procedures to be followed in providing rest periods, sometimes referred to as "coffee breaks" shall include the following:

1. Rest periods are scheduled or rescheduled by management as job requirements dictate.

2. The rest period shall consist of fifteen (15) minutes cessation of work and will include time involved in going to a d coming from a rest area.

3. Rest periods are not accumulative and shall not be added to any lunch hours, vacation, or any other form of authorized absence from work.

* (Unit 12 - Fire Management)

The compensation formula used to calculate rate of pay for Battalion Supervisors assigned to a 24 hour work shift schedule shall be that which is used for the majority of Fire Department 24 hour shift safety employees. This shall apply to regular scheduled hours and hours worked in excess of the regular scheduled hours. This provision will only apply to those employees who are assigned and work a 24 hour shift schedule.

SECTION 2. SUMMER WORK SCHEDULE

For the health and welfare of the employees, the regular work schedule for the period of May through October of each year may be adjusted to commence up to one hour earlier than the normal work schedule to avoid the extremes of weather.

SECTION 3. SOLID WASTE DEPARTMENT INCENTIVE SCHEDULE

A. PROGRAM DESCRIPTION

1. Solid Waste Department employees will be allowed to leave the worksite prior to end of the normal eight (8) hour work day with no loss of pay or use of vacation time. This practice is subject to the Solid Waste Superintendent and/or Supervisor's determination that work assignments for each day have been satisfactorily completed.

2. In addition to the daily work assignments the program will be evaluated on its positive or negative impacts on vehicle life and maintenance, employee industrial injury records, vehicle accident rates, and citizen acceptance of the program. Recognized national accident and injury rate reports will serve as the basis for evaluation along with a quarterly review of citizen request for service, and vehicle maintenance costs.

3. To assist in evaluating vehicle maintenance costs an "Evaluation Team" will be formed consisting of a management and Union representative from the Solid Waste Department and Equipment Shop.

This team will perform two (2) functions:

(a) Periodic inspection of a part from a refuse vehicle showing unusual wear and tear.

(b) Quarterly submit a report compiling maintenance costs for the quarter to the City Manager's Office for determination of the success of the program.

4. Accident and personal injury rates will be compiled quarterly by the Safety Officer.

B. OPERATIONAL DESCRIPTION

1. Excluding newspaper collectors, the program will divide Solid Waste employees into two (2) groups; commercial and residential. Dropbody and refuse container personnel will be considered separately.

2. The daily program will divide crews into three (3), four (4), or five (5) truck teams. When the team has satisfactorily completed the daily work assignments in the opinion of the immediate supervisor, the team will be released prior to the completion of the normal eight (8) hour day.

3. Typical daily work assignments include, but are not limited to the following: completion of assigned services, completion of written reports, including required check lists before and after the completion of the route, necessary cleaning of vehicles, known missed customers, storing daily work supplies, safety meetings.

4. In the "Commercial Team", a schedule will be devised providing for one (1) front loading commercial truck to start work one (1) hour later than the rest of the team, and be expected to cover the eight (8) hour shift if necessary. The schedule will rotate so each crew serves on this assignment.

5. Quarterly review by the City Manager's Office will determine the extension or termination of the program.

6. Evaluation of the program will be on the comparison of actual quarterly costs, accident and injury rates, etc., with projected averages or goals.

RECORDS MANAGEMENT

PROCEDURES MANUAL

CITY OF ONTARIO

2021

REVISED – December 2021

ATTENTION TO RECORDS

HELPS EVERYONE!

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CITY OF ONTARIO

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PAUL S. LEON
MAYOR

ALAN D. WAPNER
MAYOR PRO TEM

JIM W. BOWMAN
DEBRA DORST-PORADA
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

December 22, 2021

TO RECORDS MANAGEMENT PARTICIPANTS:

Each day Ontario City employees create, retrieve and transmit huge volumes of records. These include letters, memoranda, plans, permits, notes, financial statements, licenses, contracts, reports, studies, drawings, and countless others. Information must be properly managed so that it can be readily retrieved for current use, or preserved for future considerations. Those records that have no further value will be disposed of systematically.

The City of Ontario Records Management Program is coordinated by the City Clerk's Office/Records Management Department. However, each individual department is the custodian for their department's records and, as such, is responsible for reviewing and complying with the contents of the manual.

As to future considerations, the City Clerk/Records Management staff will be working with departments in two areas: 1) to maintain a current inventory; and 2) to assure compliance with the program's goals.

From time to time, we will provide you with updates to this material. Please be sure to insert corrected pages as they are received to ensure that you conform to the latest requirements.

Your active participation is anticipated and will assure the success of this program. You and the records you preserve are our City's most important resources.

Sincerely,

Claudia Y. Isbell, MMC,
Assistant City Clerk/
Records Management Director

INTRODUCTION

AUTHORITY

“I want to manage my records.

So, where do I start??

RECORDS MANAGEMENT
What is it??

What is it and why should you care about it?

The technical definition is: the systematic control of all records from their creation or receipt through their processing, distribution, organization and retrieval, to their ultimate disposition. Okay, let's translate from legalese: Whether it is something you wrote or something that was sent to you or copied to you, it will make your working life a little easier if you know:

1) Do I need to keep this?
2) If I do, how long do I need to keep it?
3) When I'm done with it, how do I get rid of it?

Let's compare the way we organize our records with the way we organize our clothes. *What do you do with your clothes?* Are they: Folded and sorted into drawers by type? Everything on hangers with…

- Pants in one section, shirts in another?
- All the blues here and all the whites there?
  Could it be that you like piles?
- one pile for clean stuff
- one pile for dirty stuff
- one pile for the stuff too clean to be really dirty?

How often do you clean out your closet? every 3 months? 6 months? 12 months? Maybe only when you can't get the doors closed or things remain upright even when not on a hanger.

Records storage is like this. Do you have a separate folder for each project you are working on that you keep in your desk? Maybe you work out of a departmental file that is updated and organized by an expert in your department. Or do you divide your work into piles that you keep on top of your desk? Wouldn't it be a whole lot easier if there were guidelines to tell you what you should keep and what you should give or throw away? This is what Records Management was designed to do for you and your business records.

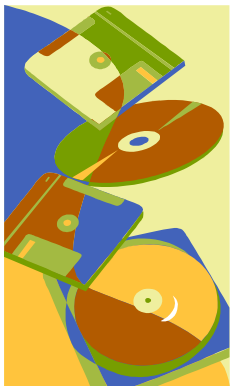
A Records Management system can provide you with:

1. Faster and more efficient retrieval of records you need for reference.
2. Protection for records that are vital to City operations, but are not referenced very often.
3. Timely transfer of inactive records to storage, freeing up filing equipment and space.
4. Identification of permanent or historical records.
5. Elimination of unnecessary duplicate records.
6. Destruction of records you no longer need as soon as the law will allow.

Let's identify our document storage systems:

FILE CABINET – a document storage system. This is where active, paper-format documents rest for short-term storage. These are usually a mixture of records and non records.

LASERFICHE – a document imaging system. This is where documents are archived electronically. It is intended for documents that must be kept a long time, are frequently referenced or are referenced by a number of people. The documents here are a 'snapshot' or image of an original document. While some also have the document text which can be exported, original formatting is lost. For documents meeting specific criteria, the LaserFiche copy becomes the record copy and the original may be destroyed.



SO WHAT IS A RECORD?

Section 6253 of the California Government Code defines public records like this:

> (e) "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.
> (f) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.

That seems to cover absolutely everything! Well, for our purposes it might be easier to tell you what is **not** a "record." These are cleverly referred to as "non-records."

Non-Records Materials:

- routing slips, transmittal letters, the preliminary draft of a letter, or confirmation of hotel reservations are examples of records that have transitory or short-term value, for which action has been completed and that have neither evidential nor informational value;
- working papers, copies of correspondence and other copied materials added to a reading file;
- extra copies of printed or processed materials for which official copies have been designated and retained;
- informal notes, worksheets, memoranda, or reports that do not represent basic steps in the preparation of documents;
- shorthand notes, including stenographic notebooks and stenotype tapes, and dictating media which have been transcribed;
- tickler, follow-up, or suspense copies of correspondence;
- superseded manuals and other directives maintained outside the department responsible for retaining them;
- materials documenting fringe activities such as employee welfare activities, charity fund drives, social activities, etc.;
- miscellaneous notices of community affairs, employee meetings, or holidays;
- requests for printed material after the requests have been filled;
- stocks of publications or unused blank forms that are kept for supply purposes only;

- publications or reference materials received or acquired from outside sources such as professional organizations, conferences, seminars, or workshops;
- physical exhibits, artifacts or other material lacking documentary value.

DO NOT keep non-records in your file with records. When the project is completed, or the agreement terminated, or the final report approved, clean out your file before you close it and put it away. If the City receives a subpoena for records, we may be required to produce **everything** in the file. That should not include reports from other cities that you used as a boilerplate for your report, or your hand-written notes that were incorporated into the final product, or 'while you were out' phone messages*, or your drafts*, or copies of invoices.

**some non-record items may have record status if they represent a basic step in the preparation of the final record.*

DUPLICATES

A duplicate is always a copy, but a copy isn't always a duplicate. What? A duplicate is a copy (which does not need to be in the same form as the original) which you keep for personal reference or operational purposes. For example, you have a copy of the current MOU. This copy was provided to you for your personal reference. It is not an original or a record copy and may be destroyed as soon as you don't have a need for it, usually when it is superseded by the next MOU. But let's look at the other side of duplicates. You have received a letter from a resident and a response was drafted and mailed. Before you mailed the letter, you made a copy to file away with the resident's original letter. If you are cleaning out your files later, can you just get rid of this, since it is only a copy? No. Remember, you don't really have an original, it was mailed to the resident. This photocopy is the City's "**record**" copy. But let's say you attached a copy to the resident's letter, put a second into a correspondence file and cc'd another department. These last two copies are duplicates and may be trashed when they are no longer needed. We say that a duplicate may not necessarily be in the same form as the original. Like the paper (hard) copy of a contract you prepared which is also in your computer in electronic format. The word processor document is a duplicate that you may destroy (delete) when you no longer need it. Perhaps, you receive some project information via e-mail and you print the message and put in the project file. The original email message is now a duplicate. What if you have a memo that was produced by your department and copied to another. *Who has the original?* Well, the most correct answer is . . . *it depends*. If, like our first example, you provided information to the other department that they used to draft the response letter, your memo (originally signed or initialed) should go into their file and any copies you kept for yourself are duplicates. If you sent an instructional or procedural memo to other departments, your copy is the original.

NOW I KNOW IT'S A RECORD, BUT HOW DO I KNOW IF I NEED IT?

There are four guidelines to help you determine if you need to keep a particular record. The most important is **Administrative use** – do you need this record in order to do your job? The next consideration is **Legal requirements** - does the law say you have to keep this record? Another thing to think about is **Fiscal requirements** - is this record necessary for auditing purposes? The final consideration is **Archival purposes** - does this record have any historical value?

CLEANING OUT THE CLOSET 

To clean out closets and other storage spaces, a "get organized" seminar recommended a **3 bag method.** A bag for things to be put away, one for things to be given away, and a third for things to be thrown away. Let's apply this process to records.

Bag 1:  **PUT IT AWAY (*active records*)**

These are the files you can't live without. You go into them regularly (every week, month, year). You should decide on a time limit for your active files, such as 5 years (or 3 or 1) in your office, then they become inactive and could go to storage.

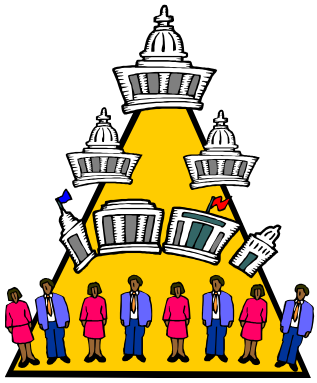
Bag 2:  **- GIVE IT AWAY (*inactive records*)**

You can't get rid of them yet, either because the law does not allow it or you still have the occasional need for the information. Be sure you store your records together by type and by destruction date.

Bag 3:  **THROW IT AWAY (*non-records and duplicate records*)**

So, you got information from another department or an example from another city or printed background from the internet in order to complete your report or project. These are materials that can be thrown away as soon as you are done with them.

GOVERNMENT RECORDS



"A government's records are important resources both to the government that creates them and to the citizens it serves. Records contain the information that keeps government functioning. They document the origin, evolution, and operation of its programs. They reveal how government operated, how it responded to needs, and how it served its citizens.

National Association of Government Archives

And Records Administration (NAGARA)

GOALS, OBJECTIVES, PURPOSE

Program Goal *To provide an efficient and economic records program wherein records can be created, maintained, retrieved, and disposed of easily; and wherein costs can be reduced or kept to a minimum for the program.*

Objectives *To save valuable office space by systematically removing semi-active records.*

To save money by providing low-cost storage and by controlling equipment purchased.

To save staff time by developing an orderly system for maintaining, retrieving , storing, and disposing of records; including the security that comes from using an efficient system.

Policies *Only active records are stored in valuable office space.*

Semi-active records are moved to low-cost storage.

Valuable historical or archival records are preserved under regulated conditions.

All eligible records shall be destroyed after meeting the minimum retention; and shall be retained longer only under special circumstances.

Purpose *The utilization of a Records Management Manual serves four specific purposes: 1) standardizes procedures, 2) establishes responsibility, 3) assists in employee training, and 4) provides for updates of procedures.*

CALIFORNIA GOVERNMENT CODE

Section 34090. **Destruction of City Records**

Unless otherwise provided by law, with the approval of the legislative body by resolution and the written consent of the City Attorney, the head of a City department may destroy any City record, document, instrument, book or paper, under his charge, without making a copy thereof, after the same is no longer required.

This section does not authorize the destruction of:

(a) Records affecting the title to real property or liens thereon.
(b) Court records.
(c) Records required to be kept by statute.
(d) Records less than two years old.
(e) The minutes, ordinances, or resolutions of the legislative body or of a City board or commission.

This section shall not be construed as limiting or qualifying in any manner the authority provided in Section 34090.5 for the destruction of records, documents, instruments, books and papers in accordance with the procedure therein prescribed.

Destruction Authorization

The Records Retention Schedules for Administration, Administrative Services, Attorney, Building, City Clerk/Records Management, City-Wide, Code Enforcement, Community & Public Services Agency, Economic Development, Engineering, Human Resources, Municipal Utilities Agency, Planning, Police, Public Facilities, Redevelopment, Risk Management/Benefits Department, were approved by the Ontario City Council on June 15, 2010, and authorization was given to the respective departments of the City to transfer, retain and destroy records identified in accordance with the retention schedules.

Section 34090.5 **Destruction of Records; Conditions**

Notwithstanding the provisions of Section 34090, the City officer having custody of public records, documents, instruments, books, and papers, may, without the approval of the legislative body or the written consent of the City attorney, cause to be destroyed any or all of such records, documents, instruments, books and papers, if all of the following conditions are complied with:

a) The record, paper, or document is photographed, micro photographed, reproduced by electronically recorded video images on magnetic surfaces, recorded in the electronic data processing system, recorded on optical disk,
b) reproduced on film or any other medium in compliance with Section 12168.7 for recording of permanent records or nonpermanent records.
c) The device used to reproduce the record, paper, or document on film, optical disk, or any other medium is one which accurately and legibly reproduces the original thereof in all details and that does not permit additions, deletions, or changes to the original document images.
d) The photographs, microphotographs, or other reproductions on film, optical disk, or any other medium are made as accessible for public reference as the original records were.

e) A true copy of archival quality of the film, optical disk, or any other medium reproductions shall be kept in a safe and separate place for security purposes.

However, no page of any record, paper, or document shall be destroyed if any page shall be permanently preserved in a manner that will afford easy reference.

Section 34090.7 Duplicate records less than two years old; destruction

Notwithstanding the provisions of Section 34090, the legislative body of a city may prescribe a procedure whereby duplicates of city records less than two years old may be destroyed if they are no longer required.

For purposes of this section, video recording media, including recordings of "routine video monitoring" pursuant to Section 34090.6, shall be considered duplicate records if the City keeps another record, such as written minutes or an audio recording, of the event that is recorded in the video medium. However, a video recording medium shall not be destroyed or erased pursuant to this section for a period of at least 90 days after occurrence of the event recorded thereon.

6200.

Every officer having the custody of any record, map, or book, or of any paper or proceeding of any court, filed or deposited in any public office, or placed in his or her hands for any purpose, is punishable by imprisonment in the state prison for two, three, or four years if, as to the whole or any part of the record, map, book, paper, or proceeding, the officer willfully does or permits any other person to do any of the following:

a) Steal, remove, or secrete
b) Destroy, mutilate, or deface
c) Alter or falsify

6201.

Every person not an officer referred to in Section 6200, who is guilty of any of the acts specified in that section, is punishable by imprisonment in the state prison, or in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars ($1,000), or by both such fine and imprisonment.

Section 6253 Definition of *Public Record*

e) "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.

g) "Writing" means any handwriting, typewriting, printing, Photostatting, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or

representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

POLICY FOR DISPOSITION OF RECORDS

Summary

The law (G.C. 34090) permits the approved, systematic destruction of records in the regular course of business which are no longer needed for administrative, legal, fiscal or historical purposes; and further provides that selective, non-uniform destruction could result in a strong legal inference that records were selectively destroyed in anticipation of litigation to suppress unfavorable documentary evidence.

Objectives

1. To protect the City in the event of litigation by demonstrating that a *responsible program* of records management is practiced from creation to disposition.
2. To comply with government statutes and the rules of government agencies, and to *protect the legal rights* and interests of the City.
3. To safeguard against the *inappropriate destruction of records.*
4. To safeguard against the *selective non-destruction* of records which have exceeded their operational requirements.
5. To *document the destruction* of records in accordance with established retention periods.
   Refer to Disposition of Records procedure elsewhere in this manual.

BEFORE DISCARDING *ANY* RECORDS, CONTACT THE RECORDS MANAGEMENT DEPARTMENT OR THE RECORDS CENTER

PROTECTION OF ELECTRONIC RECORDS

Introduction

The Records Management Program for the City of Ontario has developed standards and procedures for electronic records protection. The procedure is intended to define terms commonly used throughout the City in electronic record keeping and establish basic requirements for the maintenance, use, retention, and storage of all electronic records with a minimum retention period of ten years. These procedures are intended to protect the integrity and longevity of public records that are being stored in electronic form by the City.

Definitions

The following words and terms shall have the meanings indicated unless the context clearly indicates otherwise. Terms not defined shall have the meanings defined in the Government Code.

***AIIM* –** The association for Information and Image Management
ANSI – The American National Standards Institute
Archival Record – A record intended for permanent preservation.
Database – 1) A collection of digitally stored records, 2) a collection of data elements within records within files that have relationships with other records within other files.
Database Management System – Set of programs designed to organize, store, and retrieve machine-readable information from a computer-maintained database or data bank.
Data File – Related numeric, textual, sound, or graphic information that is organized in a strictly prescribed form and format.
Electronic Media – All media capable of being read by a computer including computer hard disks, magnetic tapes, optical disks, or similar machine-readable media.
Electronic Record – Any information that is recorded in a form for computer processing and that satisfies the definition of a local government record in the Government Code.
Electronic Records System – Any information system that produces or manipulates local government records by using a computer.
IEC – International Electro technical Commission
Information Systems Manager - The person designated as the City's representative in all issues of information systems management, policy, and responsibility.
ISO – International Organization for Standardization

Long-Term Record – A record for which the retention period on a records retention schedule is 100 years or more but less than permanent.
Medium-Term Record – A record for which the retention period on a records retention schedule is 10 years or more but less than 100 years.
Permanent Record – A record for which the retention period on a records retention schedule is permanent.
Records Administrator – The person designated as the City's representative in all issues of records management policy, responsibility, and statutory compliance.
Records Custodian – The elected official in Ontario (City Clerk) who by law is in charge of local government records.
Short-Term Record – A record for which the retention period on a records retention schedule is less than 10 years.
Text Documents **-** Narrative or tabular documents, such as letters, memorandums, and reports, in loosely prescribed form and format.

Responsibility

1. These procedures establish the minimum requirements for the maintenance, use, retention, and storage of all medium-term, long-term, permanent and archival electronics records for the City of Ontario. These rules do not apply to short-term electronic records, but these records are subject to the applicable provisions of the Government Code.
2. Unless otherwise noted, these procedures apply to all electronic records storage systems, whether on microcomputers, minicomputers, or main-frame computers, regardless of storage media.
3. The Records Administrator for the City in cooperation with departmental staff will:
    a) establish procedures for addressing recordkeeping requirements, protection and disposition of electronic records.
    b) specify the location in which electronic records are maintained to meet retention requirements and maintain inventories of electronic records systems to facilitate disposition.
4. The Information Systems Manager for the City in cooperation with department personnel responsible for database systems will:
    a) administer a program for the management of records created, received, maintained, used or stored on electronic media;
    b) integrate the management of electronic records with other records and information resources management programs of the City;
    c) incorporate electronic records management objectives, responsibilities, and authorities in pertinent City directives;
    d) ensure that training is provided for users of electronic records systems in the cooperation, care, and handling of the equipment, software, and media used in the system; and

e) ensure the development and maintenance of up-to-date documentation about all electronic records systems that are adequate to specify all technical characteristics necessary for reading or processing the records and the timely, authorized disposition of records.

5. Any electronic recordkeeping system not meeting these provisions may be utilized for medium-term, long-term, permanent or archival records provided the source document, if any, or a paper copy is maintained, or the record is microfilmed in accordance with ANSI (American National Standard for Imaging Media) standards, or in accordance with the Government Code.

Creation and Use of Files

1. Disposition instructions for the data must be incorporated into electronic records systems that produce, use, and store data files.
2. Information Systems must maintain up-to-date technical documentation for each electronic records system that produces, uses, and stores data files. Minimum documentation required is:
    a) a narrative description of the system;
    b) the physical and technical characteristics of the records, including a record layout that describes each field including its name, size, starting or relative position, and a description of the form of the data (such as alphabetic, zoned decimal, packed decimal, or numeric), or a data dictionary, or the equivalent information associated with a database management system including a description of the relationship between data elements in databases; and
    c) any other technical information needed to read or process the records.

Creation and Use of Text Documents

1. Electronic records systems that maintain the official file copy of text documents or data used to generate the official file copy of text documents on electronic media must meet the following minimum requirements:
   a) provide a method for all authorized users of the system to retrieve desired documents, such as an indexing or text search system;
   b) provide security to ensure integrity of the documents;
   c) provide a standard interchange format when determined to be necessary by department management to permit the exchange of documents on electronic media in the city using different software/operating systems; and
   d) provide for the disposition of the documents including, when necessary, the requirements for transferring archival records to the Records center as outlined in the *Records Management Procedures Manual*.
2. A document created on an electronic records system must be identified sufficiently to enable authorized personnel to retrieve, protect, and carry out the disposition of documents in the system. Departments must ensure that records maintained in such systems can be correlated with related records on paper, microform, or other media.

Security of Electronic Records

1. Information Systems must implement and maintain an electronic records security program that:
   a) Ensures that only authorized personnel have access to electronic records;
   b) Provides for backup and recovery of records to protect against information lost through utilization of the Vital Records Procedures outlined in the *Records Management Procedure Manual;*
   c) Ensures that personnel are trained to safeguard confidential electronic records;
   d) Minimizes the risk of unauthorized alteration or erasure of electronic records; and
   e) Documents that similar kinds of records generated and stored electronically are created by the same processes each time and have a standardized retrieval approach.
2. A duplicate copy of essential records and any software or documentation required to retrieve and read the records must be maintained offsite.
3. All permanent records stored on rewritable electronic media must provide that read/write privileges are controlled and that an audit trail of rewrites is maintained.

Maintenance of Electronic Records Storage Media

1. Departments must ensure that the accuracy, completeness, and accessibility of information are not lost prior to its authorized destruction date because of changing technology or media deterioration by converting electronic storage media and taking other action as required to provide compatibility with current hardware and software. The migration strategy for upgrading equipment as technology evolves must be documented and include:
   a) Periodically recopying to the same electronic media as required, and/or transferring of data from an obsolete technology to a supportable technology; and
   b) Providing backward system compatibility to the data in the old system.
2. Maintenance of backup electronic media stored offsite.
   a) Magnetic computer tapes must be tested and verified no more than 6 months prior to using them to store electronic records. Pretesting of tapes is not required if an automated system is used that monitors read/write errors and there is a procedure in place for correcting errors.
   b) A random sample of all magnetic computer tapes must be read annually to identify any loss of data and to discover and correct the causes of data loss. At least a 10% sample must be read.
   c) Tapes with unrecoverable errors must be replaced and, when possible, lost data must be restored. All other tapes which might have been affected by the same cause (e.g., poor quality tape, high usage, poor environment, improper handling) must be read and corrected.
3. Information Systems must copy data maintained on magnetic tapes or optical media onto tested and verified tapes or optical media before the current tapes are three years old and/or the optical media are 10 years old. Pretesting of tapes or optical media is not required if an automated system is used that monitors read/write errors and there is a procedure in place for correcting errors.
4. Floppy disks (diskettes) or any type of flexible disk system may not be used for the exclusive storage of medium-term, long-term, or permanent records and archival records.
5. External labels, or an eye-readable index relating to unique identifiers, for electronic media used to process or store electronic records must include the following information:
   a) Name of the department responsible for the records;
   b) Descriptive title of the contents;
   c) Date of creation and authorized disposition date;
   d) System title, including the version number of the application

6. Additionally, the following information must be maintained for electronic media used to store permanent electronic records:
   a) file title
   b) dates of coverage
   c) recording density
   d) type of internal labels
   e) volume serial number, if applicable
   f) number of tracks
   g) character code/software dependency
   h) information about block size
   i) sequence number, if file is part of a multi-media set and
   j) relative starting position of data, if applicable
7. The following standards must be met for electronic records stored as digital images on optical media:
   a) A non-proprietary image file header label must be used, or the system developer must provide a bridge to a non-proprietary image file header label, or the system developer must supply a detailed definition of image file header label structure.
   b) The system hardware and/or software must provide a quality assurance capability that verifies information that is written to the optical media.
   c) Periodic maintenance of optical data storage systems is required, including an annual recalibration of the optical drives.
   d) Scanner quality must be evaluated based on the standard procedures in ANSI/AIIM, latest revision.
   e) A visual quality control evaluation must be performed for each scanned image and related index data.
   f) A scanning density with a minimum of 200 dots per inch is required for recording documents that contain no type font smaller than six point.
   g) A scanning density with a minimum of 300 dots per inch is required for engineering drawings, maps, and other documents with background detail.
   h) The selected scanning density must be validated with tests on actual documents.
   i) The use of the Consultative Committee on International Telegraphy and Telephony (CCITT) Group 3 or Group 4 compression techniques is required for document images without continuous tonal qualities. If use of a proprietary compression technique is unavoidable, the vendor must provide a gateway to either Group 3 or Group 4 compression techniques.
   j) Optical drive systems must not be operated in environments with high levels of airborne particulates.

k) All aspects of the design and use of the imaging system must be documented, including administrative procedures for digital imaging system must be documented, including administrative procedures for digital imaging, retrieval, and storage; technical system specifications; problems encountered; and measures taken to address them, including hardware and software modifications.
l) Drinking and eating must be prohibited in electronic media storage areas.

Retention

1. The Records Management Program establishes policies and procedures to ensure that electronic records and any software, hardware and/or documentation, including maintenance documentation, required to retrieve and read the electronic records are retained as long as provided by the departmental Records Retention Schedule.
2. The retention procedures establish provisions for:
   a) scheduling the disposition of all electronic records, according to statutory requirements, as well as related software, documentation, and indices; and
   b) establishing procedures for regular recopying, reformatting, and other necessary maintenance to ensure the retention and usability of electronic records until the expiration of their retention periods.
3. City records having archival value and scheduled to be preserved must be transferred offsite as the source document, or printed out on alkaline paper for computer generated information, or on microforms that meet the ANSI standards.

Destruction

1. Electronic records may be destroyed only in accordance with a Records Retention Schedule approved by the City Council.
2. Each department must ensure that:
   a) Electronic records scheduled for destruction are disposed of in a manner that ensures protection of any confidential information and that it is not reused if the previously recorded information can be compromised by reuse in any way.

Public Access

An electronic recordkeeping system must not provide an impediment to access to public records.

RESOLUTION NO. 90-3

A RESOLUTION OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE CITY'S RECORDS MANAGEMENT PROGRAM

WHEREAS, the Records Management Program for the City of Ontario was established in November, 1989, as part of the City Clerk's Department; and

WHEREAS, the volume of paperwork generated by City departments which constitute vital records of policy, planning, growth, building regulation and emergency services make it necessary to implement a sound program of records management to more effectively use the available space, minimize potential liability, provide information in a timely manner, and coordinate departmental efforts; and

WHEREAS, the City Clerk's Department is responsible for the development, implementation, and maintenance of a City-wide Records Management Program which provides for the management and control of City records from their creation, through their active use and semi-active storage, to their ultimate disposition; and

WHEREAS, a record may be defined as information in any tangible medium used in the operation or administration of City business, record media including hardcopy (paper or card stock), source document microforms, computer-output microforms, and various magnetic media such as tape and disk; and

WHEREAS, the objective of the Records Management Program is to control costs, increase space availability, streamline information and recordkeeping systems, and improve productivity by providing records and information in a timely manner to personnel requiring them; and

WHEREAS, an effective Records Management Program demonstrates to legal and regulatory authorities that the City of Ontario is making every reasonable attempt to retain and dispose of its records in a responsible manner and in accordance with applicable guidelines and good business practice;

NOW, THEREFORE, the City Council of the City of Ontario dos hereby support the objectives of the Records Management Program and designates the City Clerk's Department as responsible for the following:

Section 1. The development and maintenance of records retention schedules which authorize retention and disposition of all City records in all media and is designated custodian for each record or record group. These schedules provide for the retention of records in accordance with legal, regulatory and operating requirements and the prompt disposition of records upon expiration of their retention periods.

Section 2. The identification and protection of vital City records and the preservation of records having archival or historical value to the City.

Section 3. The storage and disposition of semi-active and inactive records.

Section 4. To participate in the development of computer-output microfilming systems for the compaction and dissemination of computer-generated records, and for the development of source document microfilming systems with or without the support of automated records indices or computer-assisted retrieval.

Section 5. The development of uniform filing systems.

Section 6. The development and administration of records management policies and procedures, including provisions for training user personnel.

Section 7. To participate in the development of automated information systems.

I HEREBY CERTIFY that the foregoing resolution was duly and regularly passed and adopted by the City Council of the City of Ontario, California, at a regular meeting thereof held on the 2nd day of January, 1990.

_____

City Clerk of the City of Ontario

RESOLUTION NO. 2021-186

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, MAKING REVISIONS AND UPDATING CITY RECORDS RETENTION SCHEDULES AND AMENDING RESOLUTION NOS. 2010-048, 2011-070, 2016-113 and 2018-027.

WHEREAS, the maintenance of numerous records is expensive, slows document retrieval, and is not necessary after a certain period of time for the effective and efficient operation of the government of the City of Ontario; and

WHEREAS, Sections 34090 of the Government Code of the State of California provides a procedure whereby any City record which has served its purpose and is no longer required may be destroyed; and

WHEREAS, the State of California has adopted guidelines for retention period for various government records; and

WHEREAS, the City Council of the City of Ontario adopted Resolution No. 2010-048 adopting a records retention schedule.

NOW, THEREFORE, the City Council of the City of Ontario does resolve as follows:

SECTION 1. Resolution Nos. 2010-048, 2011-070, 2016-113 and 2018-027 are hereby amended.

SECTION 2. The records of the City of Ontario, as set forth in the Records Retention Schedule Exhibit A, attached hereto and incorporated herein by this reference, are hereby authorized to be destroyed as provided by Section 34090 et seq. of the Government Code of the State of California and in accordance with the provisions of said schedule upon the request of the Department Head and with the consent in writing of the Records Management Director, and in consultation with the City Clerk, without further action by the City Council of the City of Ontario.

SECTION 3. With the consent of the Records Management Director, City Manager and City Attorney, updates are hereby authorized to be made to the Records Retention Schedule without further action by the City Council.

SECTION 4. The term "records" as used herein shall include documents, instruction, books, microforms, electronic files, magnetic tape, optical media or papers as defined by the California Public Records Act.

PASSED, APPROVED, AND ADOPTED this 21st day of December 2021.

PAUL S. LEON, MAYOR

ATTEST:

SHEILA MAUTZ, CITY CLERK

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2021-186 was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held December 21, 2021 by the following roll call vote, to wit:

AYES:	MAYOR/COUNCIL MEMBERS:	LEON, WAPNER, BOWMAN, DORST-PORADA AND VALENCIA
NOES:	COUNCIL MEMBERS:	NONE
ABSENT:	COUNCIL MEMBERS:	NONE

Sheila Mautz
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2021-186 duly passed and adopted by the Ontario City Council at their regular meeting held December 21, 2021.

Sheila Mautz
SHEILA MAUTZ, CITY CLERK

(SEAL)

PROCEDURES

LIFE CYCLE OF A RECORD

RECORDS CENTER OPERATION

The Record Center is located in the basement of City Hall.

Please contact Records Management staff at 395-2009

For assistance during regular business hours

TRANSFER OF RECORDS

Summary

Records are eligible for transfer to the Records Center when determined by date or use that they have become semi-active (used or referenced less than once a month) or inactive.

Set-up

Records Storage Inventory/Disposition Authorization Form (Transfer Form) can be located on the Intranet under "Forms & Reports/City Clerk & Records Management/Records Forms/Record Inventory & Disposition Form." *Please refer to sample at the end of this section for instructions.*

Transferring Department

1. Refer to the Records Retention Schedule for your department to determine the *Retention Number* and to verify the retention period to determine whether the record is eligible for transfer for storage.

   Note: Records which have exceeded the retention period may be eligible for destruction. If unsure, check with the Records Management Staff. ***Do not destroy such records without coordinating with Records Management Director or Records Management staff.***

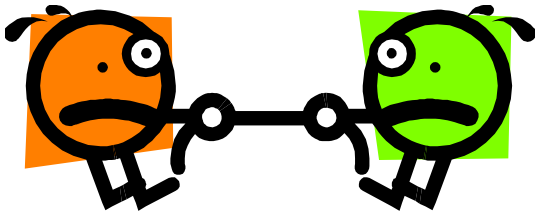
2. Prepare records for storage as follows:
   a) Purge unneeded material
   b) To avoid damage to documents, no *loose* papers allowed. All documents must be in a file folder or accordion type file folders.
   c) Fill boxes to three-fourths capacity to avoid excessive weight
   d) Use one cubic foot banker boxes provided by the Record Center. Boise, Staples type boxes not allowed.
   e) Pack files in box in the *same order* in which they are maintained in the office file.
   f) All files must be listed in order in which they are filed in the box.
   g) Do not lay files flat on top of other files that are standing.
   h) Binders not allowed. Use file folders or Acco fasteners.
   i) Rubber bands are <u>not</u> allowed.

Note: <u>Records transferred in the same box MUST have the same destruction year.</u>

3. Complete Record Storage Inventory Form per the instructions & example located in back of this section.
4. It is ok to list more than one box on the form if individual files are not being indexed individually.
5. Submit all forms electronically to Records Management Staff to review for accuracy.
6. Records Management Staff will contact staff to schedule date & time to deliver boxes.

Records Management Staff

1. Verify the Record Storage Inventory Form is accurate & complete.
2. Verify that the record being transferred is within the retention period shown in the Records Retention Schedule for the department.
3. Verify that the records in each box have the same destruction date.
4. Contact department staff to print and have the form signed by authorized person, typically, department head/director.
5. Assign an official box number and location using the *"Simple"* database.
6. Enter all files from box into the database.
7. Record the box number and the location number on the transfer sheet and return a copy to the issuing department to keep as future reference.
8. Place a copy of the Transfer Form and the "Box Report" from "*Simple*" and insert into each box.
9. Shelf boxes in their appropriate location as assigned in the Record Center or off-site.



<u>It's okay to let go of most of your records!!</u>

RECORD RETRIEVAL PROCEDURE

Summary

Semi-active and inactive records stored in the Record Center are always available to staff and may be retrieved at any time. In some instances, records could be located off-site and may need to be ordered. In this case, it could take 1 -2 days for delivery.

Requesting Department

1. Refer to your copy of the "*Record Storage Inventory/Disposition Form*" to determine the Box number in order to locate your requested file.

2. Email the Records Management Staff with the information for your retrieval request.

NOTE: To retrieve or review records other than those for your department requires the authorization/approval, either written or verbal, from the "*Department of Record".*

Records Management Staff

1. Verify that the Box number given is where the requested file is located
2. Remove the correct box with the requested file(s) or if off-site, place an order to retrieve the box.
3. Complete the following:
   a) Note *"Simple"* with the date checked out, the name of the requestor and your initials.
   b) Note Log book
   c) Fill out "RM Check Out Form" and attach a copy to the file/box being removed.
   d) File original checkout form until file(s) is returned.
   e) When the file is returned, make appropriate notes in "*Simple*" & the log book.
   f) Follow-up after thirty (30) days if record has not been returned to the Record Center by sending the department an email notification.
   g) Make appropriate notations on the log book.
   h) Staff may decide to *permanently* remove the record due to various reasons i.e. pending litigation, file returned to active status etc. Note appropriate details in both "*Simple*" and the logbook.
   i) If it is determined by staff at a later date to return the file, they must then re-submit on a transfer form.

DISPOSITION OF RECORDS

Summary

A procedure established for destroying records which no longer have administrative, legal, historical, or fiscal value to the City; and a process for the systematic, uniform destruction of such records during the regular course of business.

SECTION A: RECORDS DESTRUCTION REQUEST BY DEPARTMENT:

Department Staff

1. Using the form "*Request to Destroy Paper Records"* (*see example in back of this section*), list the *Retention Number*, *Records Description* and *Years Covered* (dates) for the document to be destroyed. It is important to verify that the documents are eligible for destruction in accordance with your *Records Retention Schedule*.

2. Obtain the signature of your department head authorizing destruction of the records.

Department Management

1. Review form to see whether records listed are involved in litigation, or if there is another operational requirement which requires a temporary extension of the retention period. If so, remove appropriate file from list & sign form.

Department Staff

1. Forward the original signed form to the Records Management Staff for verification and signature as to eligibility for destruction. A signed copy will be returned for your record.

Records Management Staff

1. Verify form to determine that records are eligible for destruction by comparison to the Department's *Records Retention Schedule*. If eligible, obtain signature from Assistant City Clerk, retain original for scanning and return copy to the department. Hold original until notified by originating department that records have been destroyed. Enter date of destruction on original form, scan and file.

SECTION B: QUARTERLY PURGE DESTRUCTION

Records Management Staff

1. Generate "*Simple*" destruction report for each department whose records are stored in the Records Center and which has exceeded the retention period approved by Council.
2. If applicable, order boxes from off-site location.
3. Stamp each copy, on each page with "*Approved for Destruction*" stamp.
4. Send destruction forms to department heads for review to determine whether records listed are involved in litigation, or if there is another operational requirement which requires a temporary extension of the retention period.
5. If records are to be given an extension and removed due to pending litigation or other operational requirements, written justification must be given to the *Records Management Director*.
6. Sign each page of the form using *blue* ink indicating approval of the records disposition and return to the *Records Management Staff.*
7. Monitor and follow up with staff for signature forms. All forms must be returned two (2) days prior to destruction.

Note: Under the Records Retention Schedule approved by the City Council, the records *will be* destroyed on schedule unless the appropriate written justification is given to the Records Management Director of the need to retain a specific record. *(See "Objective #4 of the Disposition Policy in Section 1 of this manual).*

8. On the targeted destruction date, the shredding company will remove the boxes from a designated location in the Record Center.
9. Disposition of all records will be witnessed by the Records Management Staff, and a "Certificate of Destruction" will be provided by the shredding company.
10. Upon completion, the "Simple" database must be updated to reflect status "Destroyed" for each box.

RECORDS RETENTION SCHEDULE

Summary

Each department has a separate retention schedule that describes the records that are unique to their department, or for which they are the *Office of Record*. Where appropriate, the department retention schedules are organized by Division within that Department. If a record is not listed in your department retention schedule, refer to the "*Citywide*" retention schedule. An index is provided for your reference.

The *Citywide* retention schedule includes those records that all departments have in common (letters, memorandums, purchase orders, etc.). These records are NOT repeated in the Department retention schedule, unless that department is the "*Office of Record"*, and therefore responsible for maintaining the *original* record for the prescribed length of time.

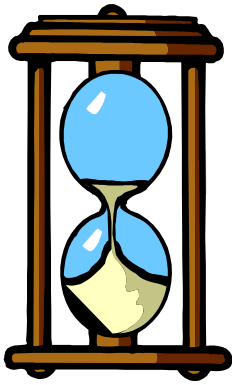
This retention schedule was developed by Gladwell Governmental Services, Inc. and provides numerous benefits to the City.

The City Council approved & adopted the revised retention schedule at the regular City Council meeting held on Tuesday, December 21, 2021.

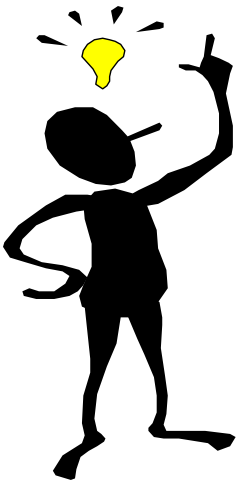
Department Staff

Retain the *Retention Schedule* in your *Records Management Procedures Manual* for reference when transferring, retrieving, and authorizing disposition of records for your department.

Note: The retention period is reviewed periodically and may be updated and or revised.
***The same approval process will then occur*.**



RECORDS MANAGEMENT



CONFUSED?
QUESTIONS?
NEED HELP?
CALL US FIRST!

RECORD STORAGE – HELPFUL TIPS!

- ✓ *Always* use sturdy one cubic foot boxes…available through us; just let us know how many you need! No damaged boxes or copy paper boxes allowed.!

- ✓ FOLLOWING ITEMS NOT ALLOWED IN BOXES:

    - *Binders*
    - *Loose documents – must be in file folder*
    - *Rubber bands or*
    - *Binder Clips*

- ✓ Fill boxes to at least three-fourths capacity…do not over fill & never lay files flat on top of files. Lid should be able to close easily.

- ✓ *Very* Important! **All files in box must have same destruction year**…DO NOT mix files that have different destruction years…either merge with other boxes or box will be returned.

- ✓ List files on transfer form as labeled on file folder. If acronyms used, spell out next to acronym. Files in box must be filed in same order as listed on transfer form.

- ✓ Number your boxes on the outside with a black Sharpie marker on the front. i.e. Box 1, Box 2 etc.

- ✓ E-mail the unsigned forms as a **Word documen**t attachment and make arrangements to deliver the boxes.

- ✓ Forms will be audited against boxes for accuracy and you will be contacted with any discrepancies for corrections. After all corrections have been made, Records will advise you to print the forms to obtain authorized signature.

- ✓ Records will assign the "official" box number and forward a copy for your record. Please note; it is very important to maintain these forms in your department for future reference when requesting files, as you will be required to provide the box number.

REMEMBER…if you have any questions or need assistance, please call 395-2164.

Karen Morrison
Records Coordinator
City Clerk / Records Management

December 2021

INSTRUCTIONS
"How to Complete Record Storage Inventory/Disposition Authorization Form"

Item 1 *Date department transferring box for storage/destruction*

Item 2 *Aligned on the left side, enter your box number i.e. 1, 2, 3*

Item 3 *No Entry - Leave Blank*

Item 4 *Enter page numbers for box i.e. 1 of 5, 2 of 5, etc.*

Item 5 *Transferring Department*

Item 6 *Name of person transferring box*

Item 7 *Contact # for person transferring box*

Item 8 *Type director's name (or other authorized person) when records being transferred are to be "stored".*
Forms are not to be signed at this time.

Item 9 *Enter "Records Description" verbiage from retention schedule for your specific type of files*

Item 10 *Optional space for additional header information to identify your files i.e. Closed Agreements, Fiscal Year, Closed Bids, etc.*

Item 11 *List file numbers i.e. 1, 2, 3 etc. or can be used to list multiple boxes on one sheet when files are not listed individually; Box 1, Box 2, etc.*

Item 12 *Use this area to identify each file in box. If you have several files that are labeled* ***exactly*** *the same, list only once with total number of files in parenthesis i.e. (10 files). Files must be listed exactly as file is labeled. When using acronyms, must also spell out i.e. WECA (West End Communications Authority)*

Item 13 *Enter a beginning date for each file folder using 8 digit dates: 01/01/2021*

Item 14 *Enter a end date or closed date of project*

Item 15 *Use appropriate "Retention Number" specific to documents. You can* ***only list one retention number on the same*** **form.** However, multiple retention codes can be combined in the same box as long as ***destruction date must be for the same year.***

Item 16 *Enter 8 digit destruction date for the record title being used. Use the latest date for the destruction year. If files permanent, use: 12/31/9999 as destruction date.*

CITY OF ONTARIO

Record Storage Inventory / Disposition Authorization Form

Date Stored *Item 1*	**Box No.** *Item 2*	**Box Location** *Item 3*	**Page 1 of_____** *Item 4*
Department/Agency *Item 5*		**Authorized Signature for Storage**	
Contact *Item 6*	**Phone No.** *Item 7*	*Item 8*	

Records Description:	*Item 9*

File No. / Box No.	**Description of File** *Item 10*	**File Date From**	**File Date To**	**Retention No.**	**Destruction Date**
	Do Not Type on this line	__/__/____	__/__/____		__/__/____
Item 11	*Item 12*	*Item 13*	*Item 14*	*Item 15*	*Item 16*

Distribution: Original to City Clerk/Records; copy inside box; copy originating department.

CITY OF ONTARIO
REQUEST TO DESTROY PAPER RECORDS

I have inspected the following records and find them to be satisfactory for the City's Records Retention Program and recommend that the paper records be destroyed.

Retention No.	RECORDS DESCRIPTION	DATES

REVIEWERS SIGNATURE	DATE
REVIEWERS NAME (Print)	**DEPARTMENT**

DESTRUCTION/DISPOSITION AUTHORIZATION

I HEREBY AUTHORIZE DESTRUCTION/DISPOSITION OF THE FILES AS LISTED ABOVE		
AUTHORIZED SIGNATURE		**DATE**
RECORDS MANAGER SIGNATURE	**Certificate #**	**DATE**

VITAL RECORDS PROGRAM

WHERE DO YOU THINK YOU'LL FIND YOUR VITAL RECORDS

VITAL RECORDS POLICY

Summary

A vital records program identifies records that will be needed to resume business in the event of a disaster, and delineates a method and procedure for protecting them.

Definition

Briefly, vital records are any media used to store information that is *critical to the continuation of business*. Archival/historical records are used to preserve and benefit the organization; they consist mainly of those records that have served their primary purpose. Use the following guidelines:

***VITAL/ESSENTIAL*:**
Are records essential to the continued operation of the City. These records are irreplaceable because they give evidence of legal status, ownership, and financial status. Vital records are generally housed in active records storage. Example: Accounts receivable, Inventory, Contracts, Creative materials, research documentation.

> **NOTE: Be selective and protect only that information that is absolutely necessary to resume business. This represents only 3% - 5% of all City records and information maintained.**

***IMPORTANT*:**
Are records *necessary* to the continued operation of the City. While these records can be replaced or reproduced, this can be done only at considerable cost in time and money. *Important* records may be housed in either active or inactive storage. Example: Accounts Payable, Directives, Payroll.

USEFUL:
Are records *useful* to the uninterrupted operation of the City. These records are replaceable although their loss could cause temporary inconvenience. Example: Bank statements or correspondence.

***NONESSENTIAL*:**
Records having *no present value* and should be destroyed. Example: Requests answered, Advertisements, or Announcements.

Objectives

In the event of a disaster, to immediately re-establish the City's:

1. ***Financial Position***
   a) Accounts Receivable

2. ***Obligations***
   a) Projects in progress
   b) Employee payroll/benefits
   c) Agreements in force
   d) Licenses/permits

3. ***Inventory***
   a) Insurance policies
   b) Assets – ownership records
   c) Negotiable instruments
   d) Infrastructure improvements

4. ***Information Processing***
   a) GIS (Geographical Information System)
   b) Public Services
   c) Financial Transactions
   d) Library circulation system
   e) Other electronic database systems

VITAL RECORDS PROCEDURES

Department Management

1. Identify vital records
2. Determine frequency of protection.
3. Determine method of protection.
   a) Laserfiche
   b) Duplication
   c) Dispersal
4. Update and approve Records Retention Schedule to incorporate *Vital Records Schedule.*
5. Designate Departmental Records Staff with the responsibility and authority to protect records and reconstruct in disaster.

Records Management Director

1. Call Departmental Records Staff to set appointment with Department Management.
2. Review *Records Retention Schedule* with departmental management and staff to identify vital records.
3. Update *Records Retention Schedule* incorporating vital records designation for appropriate records.
4. Solicit approvals from City Attorney, Administrative Services Director, and Model Colony Librarian prior to City Council approval.
5. Place amended Records Retention Schedule on Council agenda for approval.

Departmental Staff

1. Count records which are vital (refer to *Records Retention Schedule* for your department).
2. Determine how often record is generated.
3. Determine how the record is kept (on diskette, magnetic tape, book, video film, etc.
4. Determine how often record should be duplicated and transferred off site.
   Note: Work with department management on steps 1 and 4.

5. Initiate steps to protect records by following procedures found in Section 2 of this manual.

DISASTER RECOVERY SERVICES

SOURCE	SERVICE
Document Reprocessors *1384 Rollins Road* *Burlingame, CA 94010* *800 437-9464*	Vacuum freeze drying & vacuum drying of water damaged records. Equipment brought on-site. Largest mobile drying chamber will hold 640 cubic feet of records and is self-contained (no electrical power needed.
BMS Catastrophe, Inc. *308 Arthur Street* *Fort Worth, TX 76107* *800-433-2940*	Disaster recovery services
Terminex International, Inc. *Commercial Service* *1710 E Grevillea Court* *Ontario, CA 91761* *909-395-0023*	Fungicidal fogging and fumigation.

TECHNICAL ASSISTANCE

Disaster Hotline
Northeast Document
Conservation Center
100 Brickstone Square
Andover, MA 01810
978-475-6021

Conservation Treatment
Unit, Green Library
Stanford University
1450 Page Mill Road
Palo Alto, CA 94304
650-723-0394

Library of Congress
Restoration Officer
Washington, D. C.
202-707-9779

SALVAGE OF WATER DAMAGED RECORDS

MATERIAL	METHOD	HANDLING
PAPER		
Manuscripts, documents, and small Drawings	Freeze or air/ vacuum dry within 48 hours	Don't separate single sheets. Interleave between folders and pack in plastic crates or cartons.
Maps, oversize prints/manuscripts	Air, vacuum or freeze dry within 48 hours	Don't Separate single sheets. Pack in map drawers, bread trays, flat boxes or poly covered plywood.
Coated Papers	Immediately pack, then freeze dry (only) within 48 Hours	Keep wet in containers lined with garbage bags.
Framed Prints and Drawings	Air or freeze dry with 48 hours	Unframe if possible, then pack as for manuscripts or maps above.
BOOKS		
Books and Pamphlets	Air, vacuum or freeze dry within 48 hours	Do Not open or close, do not separate covers. Separate with freezer paper, pack spine down in plastic crate or
Leather and Vellum binding	Immediately freeze, then air or freeze dry	As above…
Books/Periodicals With coated papers	Immediately pack. freeze dry only within 48 hours	Do not open or close, do not separate covers. Keep wet; pack spine down in containers lined with garbage bags.

MATERIAL	METHOD	HANDLING
FLOPPY DISKS		
NOTE: *Low* success rate in recovery of magnetic records	Immediately place in cool, distilled water.	Agitate several times and dry with soft cloth. Replace with new jacket.
SOUND/VIDEO RECORDINGS		
Discs	Air dry within 48 hours. Freezing is untested; if it is necessary, freeze above 0F (-18C).	Hold discs by their edges. Avoid shocks. Pack vertically in ethafoam-padded plastic crates.
Sound/Video Tapes	Air dry. Freezing is untested; if it is necessary, freeze at above -10C.	Pack vertically into plastic crates or cardboard cartons. Don't put any heavy weight on the sides of reels or cassettes.
PHOTOGRAPHS		
Prints, negatives, and transparencies	Freeze or dry within 72 hours. Salvage order: 1) Color photographs 2) Prints 3) Negatives and transparencies Order of preference: 1) Air dry 2) Thaw & air dry 3) Freeze dry <u>Do not vacuum dry</u>.	Do not touch emulsions with bare hands. Keep in cold water. Pack in containers lined with garbage bags.
Microfilm Rolls	Make arrangements for the microfilm processor to rewash and dry within 72 Hours	Do not remove from boxes; hold cartons together with rubber bands. Fill boxes with water, and pack boxes lined with garbage bags.

MATERIAL	**METHOD**	**HANDLING**
Aperture Cards	Freeze or air dry within 48 hours	Keep wet inside a container lined with garbage bags.
Jacketed Microfilm	Freeze or air dry within 72 hours	As above…
Diazo Fiche	Last – air dry	Pack in drawers or cartons

FILING INFORMATION

WHERE IS THAT FILE?

FILING PROCEDURE

Summary

When file drawers are "tight", filing and retrieval is slow, and can cause injury to personnel and records.

Policy

The City endorses Project *ELF, Eliminate Legal-size Files,* to reduce administrative operating costs by eliminating the necessity of having both legal and letter-size papers for records and correspondence. It is, therefore, the City's policy to use 8 ½" x 11" bond paper for all documents. Maps, drawings and charts that would be unreadable at the standard size are excluded from this requirement.

Procedure

1. Allow about 3" to 4" of open space in each drawer.
2. Use between 5 and 20 file guides in each file drawer. More than this will require too much time for filing and retrieval.
3. Use a consistent type of file-folder label. A new file folder label should include the *Retention Number* from the Records Retention Schedule and the retention period approved by the City Council.
4. Folders are manageable up to ¾" thick. Any larger, the file will obscure the label. Use larger "accordion" file pockets for files larger than ¾".
5. Choose a filing system and "stick to it". (Alphabetical, numeric, alphanumeric, or chronological)
6. Keep records with similar descriptions together.
7. Keep permanent documents separate from "temporary" (shorter retention periods) documents for easy disposition, e. g. separate agreements from correspondence.

FILE PREPARATION

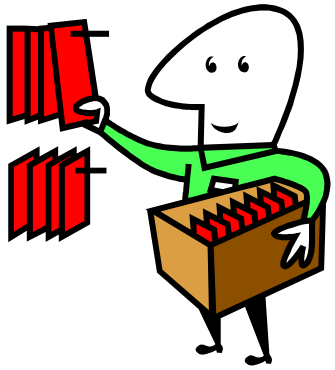
Summary

Preparing records for filing is a tedious but vital step. Files should be set up with archival integrity never with the intention to "go back and fix it later."

Procedure

1. Remove all paper clips, brads, pins and rubber bands.
2. Make sure records that are received stapled together really belong together.
3. Staple loose clippings and other small items to a sheet of paper so they will not be lost in the file.
4. Mend all torn or damaged documents before filing.
5. Sort documents into related groups and put them in order for faster filing.
6. Read the filing unit location on the label; locate the nearest file guide, and then the file folder.
7. Remove the folder completely from the drawer by holding the body of the folder, not the tab.
8. Insert documents facing forward with the top of the page to the left.
9. Arrange documents chronologically within the folder with the most recent record on top.
10. Fold oversized records individually when placing in the file folder.

Note: Fasteners or dividers may be used to separate sections of a file for easier retrieval.



FILE MAINTENANCE

Summary

Maintenance is the key to making a filing system function properly. One person should be accountable for the maintenance of the files and should have the *authority* to control their use. The knowledge that everything that is supposed to be in the files is filed properly instills confidence in the mind of users.

Procedure

1. File material daily after the mail has been processed.
2. Maintain neat files. Papers sticking out of overcrowded file folders can obstruct labels and slow down retrieval.
3. Replace torn guides and folders.
4. File excess papers in separate folders.
5. Transfer records to the *Records Center* in accordance with your *Departmental Retention Schedule.* This will reduce crowded drawers and save expensive office space.

THE 12 RULES OF FILING

Basic Filing Terms

(Based on Established Rules of ARMA)

Before learning the 12 filing rules, an understanding of filing terms is necessary.

Unit. Each part of a name is a **unit**. Names are alphabetized unit by unit. If there are two parts in a name, the name has two units. Listed below are some examples.

NAME	UNIT 1	UNIT 2	UNIT 3
Ann's Flowers	Ann's	Flowers	
Julie's Haircare	Julie's	Haircare	
Ted's Auto Parts	Ted's	Auto	Parts
Valor and Such	Valor	and	Such
Victoria's	Victoria's		

Indexing. **Indexing** is determining the order and format of the units in a name. Is a person's record filed by first or last name? Is a business record filed under *T* if the name begins with *The?* Is punctuation considered with alphabetizing a name? Indexing is deciding which name to file a record under and then arranging the units in that order.

Alphabetizing. When you arrange names in alphabetical order, you are **alphabetizing** them. The names Ann, Julie, and Ted are arranged in alphabetical order because A comes before J and J comes before T. The names Valor and Victoria are also arranged in alphabetical order. Since they both begin with a V, you consider the next or second letter in arranging for alphabetical order. If both the first and second letters are the same, consider the third letter, and so on until the letters are different and then arrange in alphabetical order using this letter.

- **Alphabetizing Unit by Unit.** The first step in alphabetizing is to alphabetize Unit by Unit. If the names in Unit 1 are exactly the same, then continue to alphabetize by Unit 2. If the first and second units are the same, the next step is to alphabetize Unit 3, and so on.
- **Nothing Comes Before Something.** In alphabetizing, it is important to remember that *nothing* comes before *something*. This means that Ann comes before Anne and Bill's Repair comes before Bill's Repair Service.
- **Case.** The **case** of a letter refers to whether the letter is written as a capital letter (A), called uppercase, or written as a small letter (a), called lowercase. In alphabetizing, uppercase and lowercase letters are considered the same. For example, McAdams and Mcadams are considered to be exactly the same when alphabetizing.

Rule 1

Names of Individuals. When indexing the name of an individual, arrange the units in this order: last name as Unit 1, first name or initial as Unit 2, and middle name or initial as Unit 3. When two names in Unit 1 begin with the same letter, you consider the next or second letter in arranging for alphabetical order. If both the first and second letters are the same, consider the third letter, and so on until the letters are different.

A unit consisting of just an initial precedes a unit that consists of a complete name beginning with the same letter. Punctuation, such as a period or apostrophe, is omitted.

NAME	UNIT 1	UNIT 2	UNIT 3
Rebecca P. Adams	ADAMS	REBECCA	P
Susan B. Anderson	ANDERSON	SUSAN	B
Terri Anderson	ANDERSON	Terri	
William Ken Jackson	JACKSON	WILLIAM	KEN
William Johnson	JOHNSON	WILLIAM	
Wilma Johnson	JOHNSON	WILMA	
Frank Shields	SHIELDS	FRANK	
Frank B. Shields	SHIELDS	FRANK	B
Debbie Shirley	SHIRLEY	DEBBIE	
Ann Marie Williams	WILLIAMS	ANN	MARIE
Anna Williams	WILLIAMS	ANNA	
David Williamson	WILLIAMSON	DAVID	

Rule 2

Personal Names with Prefixes – Articles and Particles. Prefixes, such as Mc in McAdams is considered as part of the name it precedes. Ignore any apostrophe or space that may appear within or after the prefix.

Commonly used prefixes are a, la, *d' D' de, De, Del, De la, Di, Du, El, Fitz, La, Le, Lo, Los, M', Mac, Mc, O', Saint, St., Ste., Te, Ter, Van, Van de, Van der, Von, and Von der.*

NAME	UNIT 1	UNIT 2	UNIT 3
Olivia DuBerry	DUBERRY	OLIVIA	
Paul Duberry	DUBERRY	PAUL	
Anna L'Aubourne	LAUBORNE	ANNA	
Chuck B. Launders	LAUNDERS	CHUCK	B
Jerry A. Mcdonald	MCDONALD	JERRY	A
Terri C. McDonald	MCDONALD	TERRI	C
Celeste Van Ivan	VANIVAN	CELESTE	
John Vanivan	VANIVAN	JOHN	

Rule 3

Hyphenated Personal Names. Consider a hyphenated first, middle, or last name as one unit. Do not include the hyphen in the unit name.

NAME	UNIT 1	UNIT 2	UNIT 3
Valerie Anderson-Smith	ANDERSONSMITH	VALERIE	
Jason DeTemple	DETEMPLE	JASON	
Tammy DeTemple-Jones	DETEMPLEJONES	TAMMY	
Gary Shawn Lee	LEE	GARY	SHAWN
Alison Shawn-Lee	SHAWNLEE	ALISON	
Kay-Lu S. Shuttle	SHUTTLE	KAYLU	S

Rule 4

Single Letters and Abbreviations of Personal Names. Initials in personal names (J.D., A.J.) are considered separate indexing units. Abbreviations of personal names (Wm., Jos.) and nicknames (Bill, Rick, Ali) are indexed as they are written.

NAME	UNIT 1	UNIT 2	UNIT 3
A. J. Anderson	ANDERSON	A	J
Liz Billings	BILLINGS	LIZ	
Lou Chandler	CHANDLER	LOU	
Wm. Danielson	DANIELSON	WM	
T. J. Sampson	SAMPSON	T	J
Geo. T. Vickory	VICKORY	GEO	T

Rule 5

Personal Names with Titles and Suffixes. When used with a person's name, a title or a suffix is the last indexing unit when needed to distinguish between two or more identical names. A title appears before a name (*Capt., Dr., Miss, Mr., Mrs., Ms*., *Prof., Sgt*.). Suffixes appear after a name and include seniority terms (*II, III, Jr., Sr.*) and professional designations (*CPA, CRM, CMA, MD, Ph.D*.). Some terms may appear either before or after the name (*Senator, Mayor*). If a name contains both a title and a suffix, the title is the last unit.

Royal and religious titles (*King, Queen, Prince, Princess, Father, Sister*) are considered professional designation suffixes unless they are followed by either a given name or a surname only (*Father John, Princess Anna*) in which case, they are indexed as written.

NAME	UNIT 1	UNIT 2	UNIT 3	Unit 4
Susan Bilderson, CPA	BILDERSON	SUSAN	CPA	
Father John	FATHER	JOHN		
Mrs. Anna Jones	JONES	ANNA	MRS	
King Abdula	KING	ABDULA		
Mrs. Judy Lenderman	LENDERMAN	JUDY	MRS	
Ms. Judy Lenderman	LENDERMAN	JUDY	MS	
Sister Mary Smith	SMITH	MARY	SISTER	
Peter K Teasdale III	TEASDALE	PETER	K	III
Mr. Joshua Wade, Jr.	WADE	JOSHUA	JR	MR
Dr. Frank Williams	WILLIAMS	FRANK	DR	

Rule 6

Names of Businesses and Organizations. Business names are indexed as written using the letterhead or trademark as a guide. If the letterhead is not available, use sources such as directories (phone, Internet) and advertisements.

Each word in a business name is a separate unit. *Exception*: When *The* is the first word of the business name, it is treated as the last unit. Business names containing personal names are indexed as written. Hyphenated names and names with prefixes are considered one unit.

NAME	UNIT 1	UNIT 2	UNIT 3	UNIT 4
Betty's Boutique	BETTYS	BOUTIQUE		
The Bottom Dollar Store	BOTTOM	DOLLAR	STORE	THE
Computers and Such	COMPUTERS	AND	SUCH	
Computers Are Us	COMPUTERS	ARE	US	
Cpt. John's Seafood House	CPT	JOHNS	SEAFOOD	HOUSE
Doug Tevor Hauling	DOUG	TREVOR	HAULING	
Dr. Allen's Tree Repair	DR	ALLENS	TREE	REPAIR
El Amigo Mexican Restaurant	ELAMIGO	MEXICAN	RESTAURANT	
EZ Travel Agency	EZ	TRAVEL	AGENCY	
St. Paul Lawn Care	STPAUL	LAWN	CARE	
The Worthington Coat Factory	WORTHINGTON	COAT	FACTORY	THE
Zachery Grey Daily News	ZACHERY	GREY	DAILY	NEWS

Rule 7

Letters and Abbreviations in Business and Organization Names. Single letters in business and organization names are indexed as written. If single letters are separated by spaces, index each letter as a separate unit. An acronym (word formed from the first few letters of several words, such as ARMA and F.I.C.A,) is indexed as one unit regardless of punctuation or spacing.

Abbreviated words (Mfg, Co., Corp., Inc.) and names (IBM, GE) are indexed as written and as one unit regardless of punctuation or spacing. Radio and television station call letters (WBCO, ABC) are also indexed as written and as one unit.

NAME	UNIT 1	UNIT 2	UNIT 3	UNIT 4
A K Electric	A	K	ELECTRIC	
A OK Restaurant	A	OK	RESTAURANT	
ACE Repair Co.	ACE	REPAIR	CO	
KKRS Radio Station	KKRS	RADIO	STATION	
L A N Industries	L	A	N	INDUSTRIES
LAN, Inc	LAN	INC		
Regal Mfg. Corp.	REGAL	MFG	CORP	
US Bank	US	BANK		
USA Today	USA	TODAY		

Rule 8

Punctuation and Possessives in Business and Organization Names. All punctuation is ignored when indexing business and organization names. Commas, periods, hyphens, apostrophes, dashes, exclamation points, question marks, quotation marks, and diagonals (/) are disregarded and names are indexed as written.

NAME	UNIT 1	UNIT 2	UNIT 3	UNIT 4
All-in-One Pawn Shop	ALLINONE	PAWN	SHOP	
Bob's Rent-a-Car	BOBS	RENTACAR		
The Crow's Nest	CROWS	NEST	THE	
How Much? Thrift Store	HOW	MUCH	THRIFT	STORE
Inside/Outside Glass	INSIDEOUTSIDE	GLASS		
Jack-N-Jerry Catering	JACKNJERRY	CATERING		
The Pepper!	PEPPER	THE		

Rule 9

Numbers in business and Organization Names:

Arabic numbers written in digits (1, 15, 189) and Roman numerals (II, IV) are considered one unit and are filed in numeric order before alphabetic characters with Arabic numbers preceding Roman numerals (2, 156, III, XIV)

Numbers spelled out (ONE, TWELVE, FORTY) are filed alphabetically and appear after numbers written in digits or Roman numerals. Names with numbers included are filed in ascending order (lowest to highest number) before alphabetic names (B4 SHOP, B12 VITAMIN CLUB, BATTING A THOUSAND SPORTING GOODS). Names with numbers appearing in other than the first unit are filed alphabetically and immediately before a similar name without a number (PIER 28 IMPORTS, PIER AND PORT RESTAURANT). The letters *st*, *d*, and *th* following an Arabic number are ignored (1st is indexed as 1, 2nd as 2, 5th as 5 and so on).

Inclusive or hyphenated numbers (7-11 Grocery Store) are indexed according to the number before the hyphen and the number after the hyphen is ignored (7 GROCERY STORE). Hyphenated numbers that are spelled out (Thirty-one Flavors) are considered one unit and the hyphen is ignored (THIRTYONE FLAVORS). An Arabic number followed by a hyphen and a word (7-Gables) is considered one unit (7GABLES) and the hyphen is ignored.

NAME	UNIT 1	UNIT 2	UNIT 3	UNIT 4
1-2-3 Easy Shopping	1	EASY	SHOPPING	
1 Stop Shopping Center	1	STOP	SHOPPING	CENTER
4th Street Market	4	STREET	MARKET	
7-Days Extended Inn	7DAYS	EXTENDED	INN	
XXI Movie Theatre	XXI	MOVIE	THEATRE	
Annie's Buffet	ANNIES	BUFFET		
Gary's 9-Way Service Co.	GARYS	9WAY	SERVICE	CO
Gary's Auto Repair	GARYS	AUTO	REPAIR	
Twenty Mile Steak House	TWENTY	MILE	STEAK	HOUSE
Twenty-First Street Photo	TWENTYFIRST	STREET	PHOTO	

Rule 10

Symbols in Business and Organization Names. If a symbol is part of a name, the symbol is indexed as if spelled out. When a symbol is used with a number without spacing between ($5, #1), it is considered one unit and the symbol is spelled out (5DOLLAR, NUMBER1).

&	AND
¢	CENT
$	DOLLAR or DOLLARS
#	NUMBER, POUND, or POUNDS
%	PERCENT

NAME	UNIT 1	UNIT 2	UNIT 3	UNIT 4
50¢ Burger Den	50CENT	BURGER	DEN	
D & B Bargain	D	AND	B	BARGAIN
Dan's Donut Shop	DANS	AUTO	REPAIR	SHOP
$ Days Hotel	DOLLAR	DAYS	HOTEL	
The Dollar Smart Shop	DOLLAR	SMART	SHOP	THE
Just Good ¢ Store	JUST	GOOD	CENTS	STORE

State and Local Government

Rule 11

State and local government names are indexed first by the name of the state, providence, county, city, or town that has jurisdiction over that government agency. The distinctive name of the agency is considered next. For example, a city will have jurisdiction over a board of education, so the city would be indexed first, then the board of education. The words "State of", "County of", "City of', "Department of", etc. are added *only if needed* for clarity and if it is in the official name.

NAME	JURISDICTION	INDEXED NAME
Court House, Evans County	County	EVANS COUNTY COURT HOUSE
Hazard, Kentucky		HAZARD KENTUCKY
Board of Education, Freemont, MO	City	FREEMONT EDUCATION BOARD OF FREEMONT MISSOURI
Banking Office, Dept. of Commerce, Dallas, TX	State	TEXAS COMMERCE DEPT OF BANKING OFFICE DALLAS TEXAS

	UNIT 1	**UNIT 2**		**UNIT 3**	
	UNITED	**STATE**		**GOVERNMENT**	
NAME	**UNIT 4**	**UNIT 5**	**UNIT 6**	**UNIT 7**	**UNIT 8**
U.S. Department of Agriculture Forest Service	AGRICULTURE	DEPARTMENT	OF	FOREST	SERVICE
U.S. Department of Labor Employment Standards	LABOR	DEPARTMENT	OF	EMPLOYMENT	STANDARDS

Rule 12

Addresses When personal names and names of businesses and organizations are otherwise identical, the filing order is determined by the address. The elements of the address are considered in the following order: City, State (spelled out in full), Street Name, Quadrant (NE, NW, SE, SW), House or Building Number

	COMPUTERWORLD				
NAME	**UNIT 2**	**UNIT 3**	**UNIT 4**	**UNIT 5**	**UNIT 6**
ComputerWorld 12th Avenue NE Akron, Ohio	AKRON	OHIO	AVENUE	NE	12
ComputerWorld 86 Elm Street Akron, Ohio	AKRON	OHIO	ELM	STREET	86
ComputerWorld 600 Warner Ave Columbus, Ohio	COLUMBUS	OHIO	WARNER	AVE	600
ComputerWorld 7TH & Main Portland, Oregon	PORTLAND	OREGON	AND	MAIN	7
ComputerWorld 7TH Avenue SW Portland, Oregon	PORTLAND	OREGON	AVENUE	SW	7
ComputerWorld 257 Norris Drive Portland, Texas	PORTLAND	TEXAS	NORRIS	DRIVE	257

GLOSSARY


commentator
broadcasts
comments
commerce
trade and
e.g. banking
commercial
commerce. 2
etc.

Active Record	A record that is used on a regular basis.
Administrative Value	The assessed usefulness of records to the originating department in its day to day conduct of business.
Aperture Card	An 80-column keypunch card (7 3/8 x 3 ¼) into which an opening has been cut to accommodate the insertion of a frame of microfilm.
Archival Value	The determination by records appraisal that the records are worthy of permanent preservation.
Archives	A depository for records determined to be of permanent historical value, and the body of records held in the custody of the depository. (Model Colony).
ARMA	*Association of Records Managers and Administrators* – A professional organization for records and information management.
Central Records Storage	A system for providing housing for all active or semi-active records in one location within the organization.
Certificate of Authenticity	Frame on each roll of microfilm that identifies the date filmed and the operator, and verifies the accuracy and completeness of the reproductions.
Chronologic Classification	An arrangement in which records are stored in date order.
Class 1, 2, 3, 4 Records	Class 1: Vital Records; Class 2: Important Records; Class 3: Useful Records; Class 4: Non-essential records.
Classification System	A logical, systematic ordering of records using numbers, letter, or a combination of numbers and letters for record identification.

Cross Reference	An additional notation that directs the user to another location where the record or information may be found.
Cubic Foot	That volume of records which fill a space 1' high by 1' high by 1' long. This is the basic volume measurement used for records and archives.
Data	Symbols which represent people, objects, events, or concepts.
Data Set	Groups of data or information stored on magnetic tape.
Decentralized Records Storage	A system for housing records in individual departments or offices that create or receive the records.
Density	A numeric measurement of the amount of light which passes through a black background of negative microfilm.
Department of Record	The department that created or accumulated a body of records in the course of conducting business.
Dispersal	A method of providing a copy of an original document by having access to a copy distributed externally or internally.
Documentary Materials	All forms of correspondence (letters, memos, directives, and reports), forms, drawings, specifications, maps, photographs, and creative materials.
Electronic Storage	The depositing of information in an online computer database or in the memory of a word processor.
Encyclopedic Order	Records arranged alphabetically by subject, as used in an encyclopedia.

Facsimile Transmission	The electronic transmission of hard copy data over telephone lines.
Fiber Optics	Transparent glass fibers which may transmit both analog (tonal) and digital signals by lasers.
File	A collection of records arranged according to a predetermined system.
File Integrity	Accuracy and completeness of the file.
Filing	The action of storing a record
Filing Segment	The entire name, subject, or number that is used for filing purposes.
Fiscal Value	Value attributed to a record series which documents financial transactions.
Freedom of Information and Privacy Acts	Two acts that combine to protect personal information collected by a government agency.
Geographic Order	An arrangement in which related records are grouped y place or location.
Guides	Items used for separating records into sections to facilitate storage and retrieval and for supporting folders by keeping them upright in a cabinet or on a shelf.
Hard Copy	The original paper document or paper computer printout.
Historical Value	Value attributed to a record which completes the picture of an organization's accomplishments and will aid future researchers with an interest in the organization, industry, or prominent individuals with the organization.
Important Records	Those records necessary to the continued life of a business also call *Class 2* records.

Inactive Record	A record that is referenced fewer than ten times annually.
Indexing	The mental process of deciding where a record is to be stored.
Jacket	A transparent plastic carrier for strips of microfilm.
Legal Value	Value attributed to a record series which documents business ownership, agreements, and transactions.
Life Cycle	Creation, distribution, use, maintenance, and disposition of a record.
Long-Term Record	A record that has continuing value to the organization.
Magnetic Media	Depository of information off-line from the computer database or word processing memory which may take the form of computer tapes or disks, word processor disks, or optical disks.
Magnetic Storage/Retrieval	Depositing and retrieving information offline from the computer database or word processing memory.
Memory	The capacity to retain data within the system to form a database.
Microfiche	A sheet of film containing multiple miniature images in a grid pattern.
Microform	Any medium which contains miniature images.
Micrographics	The procedures for creating, using, and storing microforms.
Microimage	A reduced copy of the original document that may be stored on a film roll, fiche, aperture card, jacket, or opaque.
Microrecords	Records stored on microforms.

Mobile Aisle System	Space-conserving cabinets of shelves or trays which move on track to create aisles for accessing records.
Nonessential Records	Those records having no present value to the organization; also call *Class 4* records.
Nonrecord Copy	A copy of a record maintained in addition to the record copy, such as materials not identified in the retention schedule; documents not required to be retained; materials available from public sources.
Numeric Filing	Any system of arranging records which is based on numbers other than dates.
Official Records	All information received, created or compiled by officials or employees of the City for the use of the City is official record material, and is therefore the property of the City of Ontario.
Offsite Records Center	A storage facility located away from the organization site.
Optical Character Recognition	(OCR) – An input device which bypasses the keyboard and feeds pre-typed data directly into word or data processing equipment.
Optical Disks	An information storage medium which resembles a phonograph record.
Original Record	The first or initial documentation, that of which anything else is a copy or reproduction.
Permanent Record	Recorded information which is required by law to be retained indefinitely, or which has been designated for continuous preservation because of its legal, administrative or historical significance to the City.
Power Elevator Lateral Files	Multiple-tier units which utilize a Ferris wheel approach to electrically bring the desired shelf to the user when needed.

Project ELF	A project (**E**liminate **L**egal-size **F**iles) focused on eliminating legal-size files from offices and converting to standard-size paper files
Public Record	A record open, by law or custom, to public inspection.
Purge	Removal of inactive records from active record storage for retention elsewhere, microfilming or destruction.
Reader Printer	A micrographics reader with the ability to produce a copy of the documents being viewed.
Record Copy	A record that serves the documentation needs of the organization.
Record Series	A group of records filed together in a unified arrangement which results from, or relates to, the same function or activity.
Records	Recorded information (books, papers, photos, maps, or other documentary materials) regardless of form or characteristics, made or received for legal or operational purposes in connection with the transaction of business.
Records Appraisal	An examination of the data gathered through the records inventory to determine the value of each record series to the organization.
Records Centers	Storage facilities to house inactive records and to serve as reference service centers.
Records Destruction	The disposal of records no longer needed by the organization.
Records Disposition	The determination of whether a record should be placed in archival storage, destroyed, or discarded based on its continued usefulness and level of confidentiality.

Records Inventory	A complete listing of the locations and contents of an organization's records.
Records Management	The systematic control of records from creation to final disposition.
Records Retention Schedule	An established timetable for maintaining records, transferring inactive records, or destroying records which are no longer valuable to the organization.
Reduction Ratio	The size of a microimage as compared to the size of the original document, usually expressed as 24x, 30x, or 24:1, 30:1, and so forth.
Relative Index	A dictionary type listing of all words and combinations of words by which records may be requested.
Retention Period	The period of time that records must be kept according to legal and/or organizational requirements.
Retrieval	Finding a requested file or information contained within the file.
Semi-active Record	A record that is referenced once a month.
Shredder	A machine used for the destruction of records by reducing the documents to fine strips, shreds, or particles.
Subject Order	An arrangement of records by the subjects of the records.
Subject-Numeric Order	An alphanumeric arrangement in which records are stored using an encyclopedia arrangement; related materials are stored together under major headings and subheadings.
Substandard Document Target	Frame showing that the original record was not completely legible and that the quality of the microimage is below standard.

Target	A sheet of paper placed in the beginning of the record which identifies the documents following by dividing a roll of film into batches of information.
Temporary Record	A record that does not have continuing or lasting value to the organization; sometimes called a transitory record.
Topical Order	An arrangement of records in alphabetic order by subject.
Ultrafiche	a microfiche produced at a reduction ratio of 90x or greater containing microimages of 4,000 or more pages.
Uniform Classification System	(UCS) A standard classification system used throughout an organization.
Updateable Microfilm/fiche	Form of micro record that allows all file information to accumulate on one record and for corrections to be made and the file to be updated.
Useful Records	Those records useful to the uninterrupted operation of the business; also called *Class 3* records.
Vital Record	A record that is essential to the operation of the organization, the continuation and/or resumption of operations following a disaster, the recreation of legal or financial status of the organization, or to the fulfillment of its obligations to stockholders and employees in the event of a disaster; also called *Class 1* record.
Working Papers	Documents such as rough notes, calculations or drafts assembled or created and used in the preparation or analysis of other documents. Working papers are non-records.

INVESTMENT POLICY

December 5, 2023

City of Ontario
303 East B Street
Ontario, CA 91764
909-395-2000
www.ontarioca.gov

CITY OF ONTARIO

City of Ontario
Investment Policy Statement

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CITY OF ONTARIO
INVESTMENT POLICY STATEMENT

1. PURPOSE

This statement is intended to: (a) describe the policies and procedures utilized in the City's investment management system; (b) put in place guidelines for the prudent investment of the City's funds, and (c) list and describe suitable investments.

The goals of the City's investment policy and investment management function are enhancement of the economic status of the City and protection of the City's funds.

The investment policies and practices of the City of Ontario are based upon federal and state law and prudent money management principles. The primary goals of these policies are:

A. To assure compliance with all laws governing the investments under the control of the City Treasurer.

B. To protect the principal monies entrusted to this office.

C. To generate the maximum amount of investment income consistent with the parameters established in this Statement of Investment Policy.

2. SCOPE

This investment policy applies to all monies belonging to the City of Ontario, and proceeds from bonds or notes issued by the City of Ontario and any authorized special districts. Bond proceeds and any funds associated with bond issues and other monies arising from bond indebtedness are further restricted by the pertinent bond indenture. Funds described above are accounted for in the City's Annual Comprehensive Financial Report.

The City will comply with all applicable sections of the Internal Revenue Code of 1986, Arbitrage Rebate Regulations and bond covenants with regards to the investment of bond proceeds.

All monies entrusted to the City Treasurer will be pooled in an actively managed portfolio and will be referred to as the "fund" or the "portfolio" throughout the remainder of this document.

3. DELEGATION OF AUTHORITY

In accordance with State law (see California Government Code Sec. 53607) and under the authority granted by the City Council (refer to appendix A and B for list of resolutions), the City Treasurer and Deputy City Treasurer(s) are authorized to invest the unexpended cash in the City treasury. The responsibility for the day-to-day investment of the City's funds is delegated to the Chief Investment Officer. In the absence of the Chief Investment Officer, the Deputy City Treasurers will be responsible for the investment function.

The City may engage the services of one or more external investment advisers, who are registered under the Investment Advisers Act of 1940, to assist in the management of the City's investment portfolio in a manner consistent with the City's objectives. External investment advisers may be granted discretion to purchase and sell investment securities in accordance with this investment policy.

4. PRUDENCE

Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs; not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived. The standard of prudence to be used by investment officials shall be the "prudent investor" standard (California Government Code Section 53600.3) and shall be applied in the context of managing an overall portfolio. Investment officers, acting in accordance with written procedures and the investment policy and exercising due diligence, shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments.

5. INVESTMENT OBJECTIVES

A. Safety of Principal

Safety of principal is the foremost objective of the investment policies and practices of the City of Ontario. Investment decisions shall seek to minimize net capital losses on a portfolio basis. This policy recognizes that market conditions may warrant the sale of individual securities incurring losses in order to protect against further and more substantial capital losses. The intent of this policy is to ensure that capital losses are minimized on a portfolio level rather than on each transaction. The City shall seek to preserve principal by mitigating credit risk and market risk.

1) Credit Risk – Defined as the risk of loss due to failure or insolvency of an issuer; shall be mitigated by diversifying the fund so that the failure of any one issuer would not unduly harm the City's cash flow. No more than 5% of the portfolio may be invested (at time of purchase) in the securities of any one single issuer except the U.S. Government, its agencies, supranational organizations, or the State of California Local Agency Investment Fund.

2) Market Risk – Defined as the risk of market value fluctuations due to changes in the general level of interest rates. Because longer maturity fixed-income securities have greater market risk than shorter maturity securities, market risk will be mitigated by limiting the weighted average maturity of the fund to 2 ½ years. It is explicitly recognized that in an active portfolio, occasional losses are inevitable and must be considered within the context of the overall investment return.

B. Liquidity

The City's fund will be structured to ensure that the projected expenditure requirements of the City for the next six months can be met with a combination of anticipated revenues, maturing securities, principal and interest payments and liquid instruments as required by California Government Code Section 53646.

C. Performance Measurement (Yield)

The performance of the City's investment portfolio will be measured on a total return basis. The portfolio's performance will be measured against a benchmark of the ICE BofAML1-3 year Treasury Index. The index's returns are reported monthly on the City's current portfolio report.

6. ETHICS AND CONFLICTS OF INTEREST

All participants in the investment process shall act as custodians of the public trust. Investment officials shall recognize that the investment portfolio is subject to public review and evaluation. Thus employees and officials involved in the investment process shall refrain from personal business activity that could create a conflict of interest or the appearance of a conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions.

Employees and investment officials shall disclose to the Investment Officer any material interests in financial institutions with which they conduct business, and they shall further disclose any large personal financial/investment positions that could be related to the performance of the investment portfolio. Employees and officers shall refrain from undertaking any personal investment transactions with the same individual with whom business is conducted on behalf of the City.

7. INTERNAL CONTROLS

The City Treasurer is responsible for establishing and maintaining an internal control structure designed to ensure that the assets of the entity are protected from loss, theft or misuse. The internal control structure shall be designed to provide reasonable assurance that these objectives are met. The concept of reasonable assurance recognizes that (1) the cost of a control should not exceed the benefits likely to be derived; and (2) the valuation of costs and benefits requires estimates and judgments by management.

Periodically, as deemed appropriate by the City, an independent analysis by an external auditor shall be conducted to review internal controls, account activity and compliance with policies and procedures.

8. SAFEKEEPING OF SECURITIES

With the exception of insured Certificates of Deposit and the Local Agency Investment Fund of the State of California, all securities owned by the City, including collateral for repurchase

agreements, shall be held in safekeeping by the City's custodial bank or a third-party bank trust department acting as agent for the City under terms of a custody or trustee agreement executed by the bank and the City. All securities will be received and delivered using standard delivery versus payment (DVP) procedures and in accordance with State Code.

9. REPORTING

The City Treasurer is required to submit an investment report on a quarterly basis to the City Manager, the Internal Auditor, and the City Council, in accordance with California Government Code, Section 53646. The report is required to be submitted within 30 days of the end of the quarter. The City Treasurer has elected to provide this report monthly. This report will include the following information:

- Type of investment instrument (i.e. Treasury Bill, CD)
- Issuer name (i.e. US Treasury Note)
- Purchase date (trade and settlement date)
- Maturity date
- Par value
- Purchase price
- Current market value and source of valuation
- Overall portfolio yield based on cost.
- Statement of compliance of the portfolio to the investment policy or an explanation of the manner in which the portfolio is not in compliance.
- Description of any of the City's funds that are under the management of contracted parties.
- Statement denoting the ability of the City to meet its expenditure requirements for the next six months, or an explanation as to why sufficient money may not be available.

10. QUALIFIED DEALERS

The Chief Investment Officer or designee shall maintain a list of financial institutions qualified to do business with the City. Banks and broker/dealers will be selected on the basis of creditworthiness, experience, and capitalization. Prior to approval, they must read and sign the City's Broker/Dealer Questionnaire and Certification. In accordance with California Government Code, Section 53601, a bank or broker/dealer must be qualified as a dealer regularly reporting to the New York Federal Reserve Bank (a "primary dealer") to conduct repurchase agreements with the City.

Selection of financial institutions and broker/dealers authorized to engage in transactions will be at the sole discretion of the City, except where the City utilizes an external investment adviser in which case the City may rely on the adviser for selection.

Selection of broker/dealers used by an external investment adviser retained by the City will be at the sole discretion of the adviser. Where possible, transactions with broker/dealers shall be selected on a competitive basis and their bid or offering prices shall be recorded. If there is no other readily available competitive offering, best efforts will be made to document quotations

for comparable or alternative securities. When purchasing original issue instrumentality securities, no competitive offerings will be required as all dealers in the selling group offer those securities at the same original issue price.

11. COMPETITIVE BIDDING

It will be the policy of the City to transact all securities purchases and sales through a formal and competitive process requiring the solicitation and evaluation of at least three bids/offers whenever possible. The City will accept the offer, which provides (a) the highest rate of return; and (b) optimizes the investment objectives of the overall portfolio. On transactions where three bids/offers are not available, the Chief Investment Officer or designee shall make an evaluation regarding the relative attractiveness of various offer using factors such as maturity date, credit ratings, structure and other factors which influence pricing. It will be the responsibility of the City's staff involved to produce and retain written records, including the name of the financial institutions solicited, price/rate quoted, description of the security, bid/offer selected, and any special considerations that had an impact on their decision.

12. PURCHASE AND SALE OF SECURITIES

Unless the services of an external investment adviser are used, purchases and sales of securities will be executed only by the Chief Investment Officer and in their absence the Deputy City Treasurer. All transactions will be reviewed and approved by the City Treasurer or their designee.

13. POLICY REVIEW

The City Treasurer shall annually render to the City Council an investment policy statement, which shall be considered at a public meeting. Any changes in the policy shall also be considered by the City Council at a public meeting.

14. DIVERSIFICATION

The City will diversify use of investment instructions to avoid unreasonable risks inherent in over-investing in specific instruments, individual financial institutions, or maturities. Market price volatility shall be controlled through maturity diversification, as well as ensuring adequate liquidity is available to meet cash flow requirements, thereby precluding the need to sell instruments at a market loss.

15. MAXIMUM MATURITIES

In accordance to California Government Code Section 53601, the City will not invest in any securities maturing more than five (5) years from the settlement date of purchase. If there is a desire to make investments longer than five years, express authority to make those

investments, either specifically or as part of an investment program, must be approved by the City Council no less than three months prior to the investment.

16. TABLE OF AUTHORIZED INVESTMENTS

INVESTMENT TYPE	MAXIMUM MATURITY	MAXIMUM SPECIFIED % OF PORTFOLIO	MINIMUM QUALITY REQUIREMENTS	CA GOVERNMENT CODE SECTIONS
U.S. Treasury Obligations	5 years	None	None	53601(b)
U.S. Agency Obligations	5 years	None, but no more than 20% in any one issuer	None	53601(f)
Bankers' Acceptances	180 days	40% and no more than 5% in any one single bank	Short-term debt rate "A-1" or better by at least one NRSRO, Long-term debt rated "A" or better by at least one NRSRO	53601(g)
Commercial Paper-Non Pooled Funds	270 days	15% and no more than 10% in any one issuer	Rate "A-1" or better by at least two NRSRO and rated "A" or better on long-term debentures by a NRSRO	53601(h)(2)(c)
Commercial Paper-Pooled Funds	270 days	15% and no more than 10% in any one issuer	Rate "A-1" or better by at least two NRSRO and rated "A" or better on long-term debentures by a NRSRO	53635(a)(1)
Negotiable Certificates of Deposit	5 years	30%	Rate "A-1" or better by at least two NRSRO	53601(i)
Repurchase Agreements	1 year	None, but no more than 20% of the cost value of the fund	Collateral rate shall be valued at 102% or greater of the value of the repurchase agreement	53601(j)(1)(2)
Local Agency Investment Fund (LAIF)	N/A	None	None	16429.1
Time Deposits (Non-Negotiable Certificate of Deposit)	5 years	25% of the fund	None	53630 et seq.
Medium-Term Notes	5 years	30% and no more than 15% rated below "AA" by at least two NRSRO; No more than 5% may be in any one corporate name	Must have rate of "A" or better by at least two NRSRO, 30% max and no more than 15% rated below "AA" by at lease two NRSRO; No more than 5% may be in any one corporate name	53601(k)
Collateralized Mortgage Obligations, Mortgage-Backed or Other Pay-Through Bond, Equipment Leased-Backed Certificate (Asset-Backed Securities), or Consumer Receivable-Back Bond	5 years	20% of the fund	Rate "AA"	53601(o)
California Local Agency Obligations	5 years	None	None	53601(e)
California State Obligations	5 years	None	None	53601(d)
Supranational Obligations	5 years	10%	Rate "AA" or better by NRSRO	53601(q)
Mutual Funds	N/A	20% and no more than 10% of total portfolio in any one mutual fund	Attain highest ranking by at least two NRSROs or have retained a registered investment advisor	53601(l) 53601.6(b)
Money Market Mutual Funds	N/A	20% and no more than 20% of total portfolio in any one money market mutual fund	Attain highest ranking by at least two NRSROs or have retained a registered investment advisor	53601(l) 53601.6(b)

17. DESCRIPTION OF AUTHORIZED INVESTMENTS

A. The City's Investment Portfolio is governed by California Government Code, Section 53600 et seq. Percentage holding limits listed in this section apply at the time the security is purchased. Within the context of these limitations, the following investments are authorized, as further limited herein:

1) United States Treasury Bills, Notes, and Bonds, or those securities for which the full faith and credit of the United States are pledged for payment of principal and interest. There is no limitation as to the percentage of the fund, which can be invested in this category.

2) Obligations—including U.S. Government Agency Mortgage pass-through securities- issued by various agencies of the Federal Government including, but not limited to, the Federal Farm Credit Bank System (FFCB), the Federal Home Loan Bank (FHLB), the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC) as well as such agencies or enterprises which may be created. There is no percentage limitation on the dollar amount which can be invested in Agency issues in total, no more than 20% of the cost value of the portfolio may be invested in the securities of any one issuer.

3) Bills of exchange or time drafts drawn on and accepted by a commercial bank, commonly known as banker's acceptances. Banker's acceptances may not exceed 180 days to maturity. To be eligible for purchase, banker's acceptances must have short-term debt obligations rated "A-1" or its equivalent or better by at least one NRSRO; or long-term debt obligations which are rated in a rating category of "A" or its equivalent or better by at least one NRSRO. No more than 40% of the cost value of the portfolio may be invested in banker's acceptances and no more than 5% of the cost value of the portfolio may be invested in banker's acceptances of any single bank.

4) Commercial paper rated "A-1" or its equivalent by at least two NRSROs and issued by a domestic corporation having assets in excess of $500 million and having at least an "A" or its equivalent rating on its long-term debentures as provided by a NRSRO. Purchases of eligible commercial paper may not exceed 270 days maturity nor represent more than 10% of the outstanding paper on an issuing corporation. Purchases of commercial paper may not exceed 15% of the portfolio, which may be invested pursuant to this section. An additional 15% or a total of 30% of the City's money may be invested pursuant to this subdivision. The additional 15% may be so invested only if the dollar weighted average maturity of the entire amount does not exceed 31 days.

5) Negotiable certificates of deposit issued by a nationally or State chartered bank or a State or Federal savings institution, or a State licensed branch of a foreign bank ("Yankee"). Purchases of negotiable certificates of deposit may not exceed 30% of

the cost value of the portfolio. To be eligible for purchase by the City, the certificate of deposit must be rated "A-1" or its equivalent by at least two NRSROs.

6) Repurchase Agreements – The City may invest in repurchase agreements with primary dealers of the Federal Reserve Bank of New York with which the City has entered into a master repurchase agreement. The Public Securities Association master repurchase agreement is the "master repurchase agreement". The maturity of repurchase agreements shall not exceed one year. The market value of securities used as collateral for repurchase agreements shall be valued at no less than 102% of the value of the repurchase agreement. Collateral pricing will be monitored no less than monthly by the investment staff and not be allowed to fall below 102% of the value of the repurchase agreement. In order to conform to provisions of the Federal Bankruptcy Code which provide for the liquidation of securities held as collateral for repurchase agreements, the only securities acceptable to the city as collateral shall be securities that are direct obligations of, or that are fully guaranteed as to principal and interest, by the United States or any agency thereof. Investments in repurchase agreements may not exceed 20% of the cost value of the fund.

7) Local Agency Investment Fund - The City may invest in the Local Agency Investment Fund ("LAIF") established by the State Treasurer for the benefit of local agencies up to the maximum permitted under Section 16429.1 of the California Government Code.

8) Time Deposits – The City may invest in non-negotiable time deposits collateralized in accordance with the California Government Code, which meet the requirements for investment in negotiable certificates of deposit. The City may invest in insured certificates of deposit with individual depository institutions up to the insured limit. No more than 25% of the fund may be invested in this category.

9) Medium-term notes of a maximum of five years maturity issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any State and operating within the United States. The issuing corporation must have a minimum rating of "A" or its equivalent by at least two NRSROs and have in excess of $500 million in shareholder equity. Purchase of medium-term notes may not exceed 30% of the cost value of the portfolio with no more than 15% of the cost value of the portfolio rated below "AA" or its equivalent by at least two NRSROs. No more than 5% of the portfolio (at time of purchase) may be invested in any one corporate name, including the parent corporation or subsidiaries.

10) Asset Backed Securities - Any collateralized mortgage obligations, mortgage-backed or other pay-through bond, equipment lease-backed certificate, or consumer receivable-backed bond. Securities eligible for investment under this section shall be rated in a rating category of "AA" by a nationally recognized statistical rating organization and have a maximum remaining maturity of 5 years or less. Purchase of securities authorized by this subdivision may not exceed 20% of the cost value of the portfolio.

11) Bonds, notes, warrants or other evidences of indebtedness of any local agency of this state, including bonds payable solely out of the revenues from a revenue producing property owned, controlled, or operated by the local agency, or by a department, board, agency, or authority of the local agency.

12) Registered state warrants or treasury notes or bonds of this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled or operated by the state or by a department, board, agency or authority of the state.

13) Supranational Obligations - United States dollar denominated senior unsecured unsubordinated obligations issued or unconditionally guaranteed by the International Bank for Reconstruction and Development, International Finance Corporation, or Inter-American Development Bank, with a maximum remaining maturity of five years or less, and eligible for purchase and sale within the United States. Investments under this subdivision shall be rated "AA" or better by an NRSRO and shall not exceed 10 percent of the City's moneys that may be invested pursuant to this section.

14) Mutual Funds and Money Market Mutual Funds that are registered with the Securities and Exchange Commission under the Investment Company Act of 1940, provided that:

a) **Mutual Funds** that invest in the securities and obligations as authorized under California Government Code, Section 53601 (a) to (k) and (m) to (q) inclusive and that meet either of the following criteria:

i. Attained the highest ranking or the highest letter and numerical rating provided by not less than two (2) NRSROs; or
ii. Have retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience investing in the securities and obligations authorized by California Government Code, Section 53601 and with assets under management in excess of $500 million.
iii. No more than 10% of the total portfolio may be invested in shares of any one mutual fund.

b) **Money Market Mutual Funds** registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and issued by diversified management companies and meet either of the following criteria:

i. Have attained the highest ranking or the highest letter and numerical rating provided by not less than two (2) NRSROs; or

ii. Have retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience managing money market mutual funds with assets under management in excess of $500 million.

iii. No more than 20% of the total portfolio may be invested in the shares of any one Money Market Mutual Fund.

c) No more than 20% of the total portfolio may be invested in these securities.

B. In the event of a rating downgrade of security in the City's portfolio by any of the applicable rating agencies (Standard and Poor's or Moody's) to a rating category below the minimum required for purchase, the Chief Investment Officer or designee will document such downgrade in writing. The Chief Investment Officer or designee will also communicate to the City Treasurer a recommended course of action for said security.

18. INVESTMENT POOLS/MUTUAL FUNDS

The City shall conduct a thorough investigation of any pool or mutual fund prior to making an investment, and on a continual basis thereafter. The Treasurer or their designee shall develop a questionnaire which will answer the following general questions:

- A description of eligible investment securities, and a written statement of investment policy and objectives.
- A description of interest calculations and how it is distributed, and how gains and losses are treated.
- A description of how the securities are safeguarded (including the settlement processes), and how often the securities are priced and the program audited.
- A description of who may invest in the program, how often, what size deposit and withdrawal are allowed.
- A schedule for receiving statements and portfolio listings.
- A description of how the pool/fund utilizes reserves, retained earnings, etc.
- A fee schedule, including when and how is it assessed.
- The eligibility of the pool/fund to invest in bond proceeds and special district funds, and a description of its practices.

19. COLLATERALIZATION

Certificates of Deposit (CDs). The City shall require any commercial bank or savings and loan association to deposit eligible securities with an agency of a depository approved by the State Banking Department to secure any uninsured portion of a Non-Negotiable Certificate of Deposit. The value of eligible securities as defined pursuant to California Government Code, Section 53651, pledged against a Certificate of Deposit shall be equal to 150% of the face value of the CD if the securities are classified as mortgages and 110% of the face value of the CD for all other classes of security.

Collateralization of Bank Deposits. This is the process by which a bank or financial institution pledges securities, or other deposits for the purpose of securing repayment of deposited funds. The City shall require any bank or financial institution to comply with the collateralization criteria defined in California Government Code, Section 53651.

Repurchase Agreements. The City requires that Repurchase Agreements be collateralized only by securities authorized in accordance with California Government Code:

1. The securities which collateralize the repurchase agreement shall be priced at Market Value, including any Accrued Interest plus a margin. The Market Value of the securities that underlie a repurchase agreement shall be valued at 102% or greater of the funds borrowed against those securities.
2. Financial institutions shall mark the value of the collateral to market at least monthly and increase or decrease the collateral to satisfy the ratio requirement described above.
3. The City shall receive monthly statements of collateral.

20. INELIGIBLE INVESTMENTS

Ineligible investments – investments not described herein-, are prohibited for purchase in the City's portfolio. Specifically prohibited as of January 1, 1996 are: Inverse floaters, range notes, interest-only strips derived from a pool of mortgages, or any security that could result in zero interest accrual if held to maturity.

21. GLOSSARY OF INVESTMENT TERMS

Agencies. Shorthand market terminology for any obligation issued by a government-sponsored entity (GSE), or a federally related institution. Most obligations of GSEs are not guaranteed by the full faith and credit of the US government. Examples are:

FFCB. The Federal Farm Credit Bank System provides credit and liquidity in the agricultural industry. FFCB issues discount notes and bonds.

FHLB. The Federal Home Loan Bank provides credit and liquidity in the housing market. FHLB issues discount notes and bonds.

FHLMC. Like FHLB, the Federal Home Loan Mortgage Corporation provides credit and liquidity in the housing market. FHLMC, also called "FreddieMac" issues discount notes, bonds and mortgage pass-through securities.

FNMA. Like FHLB and FreddieMac, the Federal National Mortgage Association was established to provide credit and liquidity in the housing market. FNMA, also known as "FannieMae," issues discount notes, bonds and mortgage pass-through securities.

GNMA. The Government National Mortgage Association, known as "GinnieMae," issues mortgage pass-through securities, which are guaranteed by the full faith and credit of the US Government.

Asset Backed Securities. Securities supported by pools of installment loans or leases or by pools of revolving lines of credit.

Banker's Acceptance. A money market instrument created to facilitate international trade transactions. It is highly liquid and safe because the risk of the trade transaction is transferred to the bank which "accepts" the obligation to pay the investor.

Basis Point. One one-hundredth of a percent (i.e., 0.01 percent)

Benchmark. A comparison security or portfolio. A performance benchmark is a partial market index, which reflects the mix of securities allowed under a specific investment policy.

Bond Equivalent Yield. The basis on which yields on notes and bonds are quoted.

Book Value (Cost Value). The purchase price of the security as recorded on the City's books.

Broker. A broker brings buyers and sellers together for a transaction for which the broker receives a commission. A broker does not sell securities from his own position.

California Debt & Investment Advisory Commission (CDIAC). The California Debt and Investment Advisory Commission (CDIAC) provides information, education and technical assistance on debt issuance and public fund investments to local public agencies and other public finance professionals. The Commission was created in 1981 with the passage of Chapter 1088, Statutes of 1981 (Assembly Bill (AB) 1192, Costa). This legislation established the California Debt Advisory Commission as the State's clearinghouse for

public debt issuance information and required it to assist state and local agencies with the monitoring, issuance and management of public debt.

Callable. A callable security gives the issuer the option to call/redeem it from the investor prior to its maturity. The main cause of a call is a decline in interest rates. If interest rates decline, the issuer will likely call its current securities and reissue them at a lower rate of interest.

Certificate of Deposit (CD). A time deposit with a specific maturity evidenced by a certificate.

Collateral. Securities or cash pledged by a borrower to secure repayment of a loan or repurchase agreement. Also, securities pledged by a financial institution to secure deposits of public monies.

Collateralized Bank Deposit. A bank deposit that is collateralized at least 100% (principal plus interest to maturity). The deposit is collateralized using assets set aside by the issuer such as Treasury securities or other qualified collateral to secure the deposit in excess of the limit covered by the Federal Deposit Insurance Corporation.

Collateralized Mortgage Obligations (CMO). Classes of bonds that redistribute the cash flows of mortgage securities (and whole loans) to create securities that have different levels of prepayment risk, as compared to the underlying mortgage securities.

Collateralized Time Deposit. Time deposits that are collateralized at least 100% (principal plus interest to maturity). These instruments are collateralized using assets set aside by the issuer such as Treasury securities or other qualified collateral to secure the deposit in excess of the limit covered by the Federal Deposit Insurance Corporation.

Commercial Paper. The short-term unsecured debt of corporations.

Corporate Medium Term Note. A security issued by a corporation doing business in the U.S. with a maturity not to exceed five years.

Cost Value (Book Value). The purchase price of the security as recorded on the City's books.

Coupon. The rate of return at which interest is paid on a bond.

Credit Risk. The risk that principal and/or interest on an investment will not be paid in a timely manner due to changes in the condition of the issuer.

Dealer. A dealer acts as a principal in security transactions, selling securities from and buying securities for his own position.

Debenture. A bond secured only by the general credit of the issuer.

Delivery vs. Payment (DVP). A securities industry procedure whereby payment for a security must be made at the time the security is delivered to the purchaser's agent.

Derivative. Any security that has principal and/or interest payments which are subject to uncertainty (but not for reasons of default or credit risk) as to timing and/or amount, or any security which represents a component of another security which has been separated from other components ("Stripped" coupons and principal). A derivative is also defined as a financial instrument the value of which is totally or partially derived from the value of another instrument, interest rate, or index.

Discount. The difference between the par value of a bond and the cost of the bond, when the cost is below par. Some short-term securities, such as T-bills and banker's acceptances, are known as discount securities. They sell at a discount from par and return the par value to the investor at maturity without additional interest. Other securities, which have fixed coupons, trade at a discount when the coupon rate is lower than the current market rate for securities of that maturity and/or quality.

Diversification. Dividing investment funds among a variety of investments to avoid excessive exposure to any one source of risk.

Duration. The weighted average time to maturity of a bond where the weights are the present values of the future cash flows. Duration measures the price sensitivity of a security to changes interest rates.

Federal Deposit Insurance Corporation (FDIC). The Federal Deposit Insurance Corporation (FDIC) is an independent federal agency insuring deposits in U.S. banks and thrifts in the event of bank failures. The FDIC was created in 1933 to maintain public confidence and encourage stability in the financial system through the promotion of sound banking practices.

Federal Open Market Committee (FOMC). Consists of seven members of the Federal Reserve Board and five of the twelve Federal Reserve Bank Presidents. The President of the New York Federal Reserve Bank is a permanent member, while the other presidents serve on a rotating basis. The Committee periodically meets to set Federal Reserve guidelines regarding purchases and sales of Government Securities in the open market as a means of influencing the volume of the bank credit and money.

Federally Insured Time Deposit. A time deposit is an interest-bearing bank deposit account that has a specified date of maturity, such as a certificate of deposit (CD). These deposits are limited to funds insured in accordance with FDIC insurance deposit limits.

Fiscal Agent. A financial institution which performs payment of principal and interest to bondholders, and certain administrative duties on the bond issuer's behalf.

Liquidity. The speed and ease with which an asset can be converted to cash.

Local Agency Investment Fund (LAIF). A voluntary investment fund open to government entities and certain non-profit organizations in California that is managed by the State Treasurer's Office.

Local Agency Investment Guidelines (LAIG). Published by CDIAC, these guidelines are intended to aid local officials in their efforts to implement existing laws pertaining to the investment of public funds. Each year, CDIAC staff convenes a working group of public- and private-sector professionals to support its efforts to revise and update these Guidelines

Local Government Investment Pool. Investment pools that range from the State Treasurer's Office Local Agency Investment Fund (LAIF) to county pools, to Joint Powers Authorities (JPAs). These funds are not subject to the same SEC rules applicable to money market mutual funds.

Make Whole Call. A type of call provision on a bond that allows the issuer to pay off the remaining debt early. Unlike a call option, with a make whole call provision, the issuer makes a lump sum payment that equals the net present value (NPV) of future coupon payments that will not be paid because of the call. With this type of call, an investor is compensated, or "made whole."

Margin. The difference between the market value of a security and the loan a broker makes using that security as collateral.

Market Risk. The risk that the value of securities will fluctuate with changes in overall market conditions or interest rates.

Market Value. The price at which a security can be traded.

Master Repurchase Agreement. A written contract covering all future transactions between the parties to repurchase-reverse repurchases agreements that establishes each party's rights in the transactions. A master agreement will often specify, among other things, the right of the buyer-lender to liquidate the underlying securities in the event of default by the seller borrower.

Maturity. The final date upon which the principal of a security becomes due and payable.

Medium Term Notes. Unsecured, investment-grade senior debt securities of major corporations which are sold in relatively small amounts on either a continuous or an intermittent basis. MTNs are highly flexible debt instruments that can be structured to respond to market opportunities or to investor preferences.

Modified Duration. The percent change in price for a 100-basis point change in yields. Modified duration is the best single measure of a portfolio's or security's exposure to market risk.

Money Market. The market in which short-term debt instruments (T-bills, discount notes, commercial paper, and banker's acceptances) are issued and traded.

Money Market Mutual Fund. A mutual fund that invests exclusively in short-term securities. Examples of investments in money market funds are certificates of deposit and U.S. Treasury securities. Money market funds attempt to keep their net asset values at $1 per share.

Mortgage Pass-Through Securities. A securitized participation in the interest and principal cash flows from a specified pool of mortgages. Principal and interest payments made on the mortgages are passed through to the holder of the security.

Municipal Securities. Securities issued by state and local agencies to finance capital and operating expenses.

Mutual Fund. An entity which pools the funds of investors and invests those funds in a set of securities which is specifically defined in the fund's prospectus. Mutual funds can be invested in various types of domestic and/or international stocks, bonds, and money market instruments, as set forth in the individual fund's prospectus. For most large, institutional investors, the costs associated with investing in mutual funds are higher than the investor can obtain through an individually managed portfolio.

Nationally Recognized Statistical Rating Organization (NRSRO). A credit rating agency that the Securities and Exchange Commission in the United States uses for regulatory purposes. Credit rating agencies provide assessments of an investment's risk. The issuers of investments, especially debt securities, pay credit rating agencies to provide them with ratings. The three most prominent NRSROs are Fitch, S&P, and Moody's.

Negotiable Certificate of Deposit (CD). A short-term debt instrument that pays interest and is issued by a bank, savings or federal association, state or federal credit union, or state-licensed branch of a foreign bank. Negotiable CDs are traded in a secondary market and are payable upon order to the bearer or initial depositor (investor).

Paper Gain Or Loss. Term used for unrealized gain or loss on securities being held in a portfolio based on comparison of current market quotes and their original cost. This situation exists as long as the security is held while there is a difference between cost value (book value) and the market value.

Portfolio. Collection of securities held by an investor.

Primary Dealer. A financial institution (1) that is a trading counterparty with the Federal Reserve in its execution of market operations to carry out U.S. monetary policy, and (2) that participates for statistical reporting purposes in compiling data on activity in the U.S. Government securities market.

Prudent Person (Prudent Investor) Rule. A standard of responsibility which applies to fiduciaries. In California, the rule is stated as "Investments shall be managed with the care, skill, prudence and diligence, under the circumstances then prevailing, that a prudent person, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of like character and with like aims to accomplish similar purposes."

Rate of Return. The yield obtainable on a security based on its purchase price or its current market price. This may be the amortized yield to maturity; on a bond, the current income return.

Repurchase Agreement (REPO). Short-term purchases of securities with a simultaneous agreement to sell the securities back at a higher price. From the seller's point of view, the same transaction is a reverse repurchase agreement.

Reverse Repurchase Agreement (Reverse REPO). A reverse-repurchase agreement (reverse repo) involves an investor borrowing cash from a financial institution in exchange for securities. This investor agrees to repurchase the securities at a specific date for the same cash value plus an agreed upon interest rate. Although the transaction is similar to repo, the purpose of entering into a reverse repo is quite different. While a repo is straightforward investment of public funds, the reverse repo is a borrowing.

Safekeeping. A service to bank customers whereby securities are held by the bank in the customer's name.

Securities and Exchange Commission (SEC). The U.S. Securities and Exchange Commission (SEC) is an independent federal government agency responsible for protecting investors, maintaining fair and orderly functioning of securities markets and facilitating capital formation. It was created by Congress in 1934 as the first federal regulator of securities markets. The SEC promotes full public disclosure, protects investors against fraudulent and manipulative practices in the market, and monitors corporate takeover actions in the United States.

Securities and Exchange Commission SEC) Rule 15c3-1. An SEC rule setting capital requirements for brokers and dealers. Under Rule 15c3-1, a broker or dealer must have sufficient liquidity in order to cover the most pressing obligations. This is defined as having a certain amount of liquidity as a percentage of the broker/dealer's total obligations. If the percentage falls below a certain point, the broker or dealer may not be allowed to take on new clients and may have restrictions placed on dealings with current client.

Spread. a) The yield or price difference between the bid and offer on an issue. b) The yield or price difference between different issues.

Structured Note. A complex, fixed income instrument, which pays interest, based on a formula tied to other interest rates, commodities or indices. Examples include inverse floating rate notes which have coupons that increase when other interest rates are falling, and which fall when other interest rates are rising, and "dual index floaters," which pay interest based on the relationship between two other interest rates - for example, the yield on the ten-year Treasury note minus the Libor rate. Issuers of such notes lock in a reduced cost of borrowing by purchasing interest rate swap agreements.

Supranational. A Supranational is a multi-national organization whereby member states transcend national boundaries or interests to share in the decision making to promote economic development in the member countries. There are three supranational institutions that issue obligations that are eligible investments for California local agencies: the International Bank of Reconstruction and Development (IBRD), International Finance Corporation (IFC), and Inter-American Development Bank (IADB).

Swap. The sale of one issue and the simultaneous purchase of another for some perceived advantage.

Total Rate of Return. A measure of a portfolio's performance over time. It is the internal rate of return, which equates the beginning value of the portfolio with the ending value; it includes interest earnings, realized and unrealized gains, and losses in the portfolio.

U.S. Treasury Obligations. Securities issued by the U.S. Treasury and backed by the full faith and credit of the United States. Treasuries are considered to have no credit risk and are the benchmark for interest rates on all other securities in the US and overseas. The Treasury issues both discounted securities and fixed coupon notes and bonds.

Treasury Bills. All securities issued with initial maturities of one year or less are issued as discounted instruments and are called Treasury bills. The Treasury currently issues three- and six-month T-bills at regular weekly auctions. It also issues "cash management" bills as needed to smooth out cash flows.

Treasury Bonds. All securities issued with initial maturities greater than ten years are called Treasury bonds. Like Treasury notes, they pay interest semi-annually.

Treasury Notes. All securities issued with initial maturities of two to ten years are called Treasury notes and pay interest semi-annually.

Trustee. A financial institution with trust powers that acts in a fiduciary capacity for the benefit of the bondholders in enforcing the terms of the bond contract.

Yield Curve. Yield calculations of various maturities at a given time to observe spread difference.

Yield to Maturity. The annualized internal rate of return on an investment which equates the expected cash flows from the investment to its cost.

APPENDIX A – LIST OF RESOLUTIONS FOR INVESTMENT OF INACTIVE FUNDS IN LAIF

Resolution Number	City Council Approval Date
2022-157	December 6, 2022
2021-164	November 2, 2021
2020-171	October 20, 2020
2020-128	July 21, 2020
2019-090	July 2, 2019
2019-008	February 19, 2019
2018-154	November 20, 2018

APPENDIX B – LIST OF RESOLUTIONS FOR INVESTMENT OF CITY FUNDS

Resolution Number	City Council Approval Date
2022-158	December 6, 2022
2021-165	November 2, 2021
2020-172	October 20, 2020
2020-129	July 21, 2020
2019-091	July 2, 2019
2019-009	February 19, 2019
2018-155	November 20, 2018

ORDINANCE NO. 3211

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING CHAPTER 2 OF TITLE 1, CHAPTER 6 OF TITLE 2, AND CHAPTERS 1 AND 2 OF TITLE 3 OF THE ONTARIO MUNICIPAL CODE RELATING TO THE PROCUREMENT OF ON-CALL SERVICES, APPROVAL AND MANUAL SIGNATURE REQUIREMENTS, AND FEES LOCATED IN THE CITYWIDE FEE SCHEDULE.

WHEREAS, Chapter 6 of Title 2 of the Ontario Municipal Code establishes a centralized purchasing system to control the efficient procurement of goods, services, and public projects required by the City of Ontario ("City'); and

WHEREAS, Chapter 6 of Title 2 of the Ontario Municipal Code currently does not contain standards relating to the provision of on-call agreements; and

WHEREAS, on-call agreements would allow the City to establish master agreements with vendors in order to obtain professional, non-professional and maintenance services agreements on an as-needed basis, greatly streamlining City response time to service needs; and

WHEREAS, the City desires to amend a portion of Chapter 6 of Title 2 of the Ontario Municipal Code in order to provide procedures for the establishment of on-call agreements; and

WHEREAS, Section 3-1.217 of Article 2 of Chapter 1 of Title 3 of the Ontario Municipal Code outlines the business license tax for filmmaking businesses within the City; and

WHEREAS, the filmmaking within City boundaries is also subject to a permitting process and payment of an accompanying Film Permit Fee, as outlined on the Citywide Fee Schedule; and

WHEREAS, Section 3-1.217 of Article 2 of Chapter 1 of Title 3 of the Ontario Municipal Code currently does not contain any references to the City Film Permit process and Film Permit Fee; and

WHEREAS, the City desires to amend Section 3-1.217 of Article 2 of Chapter 1 of Title 3 of the Ontario Municipal Code in order to reference the City Film Permit process and accompanying Film Permit Fee as provided by the Citywide Fee Schedule; and

WHEREAS, Section 3-2.05 of Chapter 3 of Title 2 of the Ontario Municipal Code provides procedures for the payment of purchases, supplies, or services; and

WHEREAS, Section 3-2.05 of Chapter 3 of Title 2 of the Ontario Municipal Code contains a requirement that issued checks for payment of approved invoices be manually signed by the Mayor and appropriate City officer; and

WHEREAS, the City is increasingly paying approved invoices via electronic transfer; and

WHEREAS, Section 3-2.05 of Chapter 3 of Title 2 of the Ontario Municipal Code also contains provisions requiring certain audits and approvals to be carried out by the Executive Director of Finance and City Manager; and

WHEREAS, in the interest of streamlining the approval process, the City desires to amend Section 3-2.05 of Chapter 3 of Title 2 of the Ontario Municipal Code in order to: (1) remove the manual signature requirement for issuing payment for approved invoices; and (2) allow the Executive Director of Finance and City Manager to designate an authorized agent to make certain approvals; and

WHEREAS, certain fees charged for City services are outlined in the Citywide Fee Schedule, adopted as part of the City's annual budget; and

WHEREAS, certain fees located within the Citywide Fee Schedule are also listed in the text of their respective Municipal Code sections; and

WHEREAS, Section 1-2.08 of Chapter 2 of Title 1 and Section 3-1.108 of Article 1 of Chapter 1 of Title 3 of the Ontario outline the fees charged for declined credit cards and checks issued with insufficient funds; and

WHEREAS, these fees have been subsequently updated by the Citywide Fee Schedule, but this update is not reflected in the particular Municipal Code sections; and

WHEREAS, in order to avoid confusion regarding the amounts charged for certain fees, the City also desires to amend these portions of the Municipal Code in order to reference the Citywide Fee Schedule.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ONTARIO DOES ORDAIN AS FOLLOWS:

SECTION 1. The recitals above are true and correct and are hereby incorporated herein by this reference.

SECTION 2. Section 1-2.08 entitled "Charges for checks and credit cards unpaid" of Chapter 2 of Title 1 of the Ontario Municipal Code is hereby amended to read, as follows:

"Sec. 1-2.08. Charges for checks and credit cards unpaid.

(a) Any check presented as payment that is returned unpaid by any financial institution is subject to a service fee in the amount set forth in the current Citywide Fee Schedule.

(b) Any credit card payment that is stopped by the card user is subject to a services fee in the amount set forth in the current Citywide Fee Schedule."

SECTION 3. Section 2-6.14 entitled "Services" of Chapter 6 of Title 2 of the Ontario Municipal Code is hereby amended to read, as follows:

"Sec. 2-6.14. Services.

Professional, non-professional and maintenance service contracts may be let by any formal, informal or alternative procedure, as established by City Council resolution, or in the absence of any such City Council resolution as established by administrative rule or regulation. Award may be predicated on a best value selection.

Unless prohibited by law, the City may establish, consistent with the procurement requirements of this chapter and any supplemental regulations, master agreements with vendor's providing professional, non-professional and maintenance services that allow the City to issue task or job orders under the master agreements without being subject to further procurement requirements, but prices should be obtained in a manner to ensure best value to the City."

SECTION 4. Section 3-1.108 entitled "Payment of business license taxes" of Article 1 of Chapter 1 of Title 3 the Ontario Municipal Code is hereby amended to read, as follows:

"Sec. 3-1.108. Payment of business license taxes.

(a) All business license taxes shall be paid in advance in legal money of the United States, at the office of the License Official.

(b) A charge in an amount specified in the Citywide Fee Schedule currently in effect at the time of the violation shall be assessed for any check returned for lack of sufficient funds. Penalties shall also be assessed pursuant to § 3-1.117 of this chapter, unless a new check clears prior to the delinquent date."

SECTION 5. Section 3-1.217 entitled "Film making: Business license tax" of Article 2 of Chapter 1 of Title 3 of the Ontario Municipal Code is hereby amended to read, as follows:

"Sec. 3-1.217. Film making: Business license tax

(a) Every person who for the purpose of producing a motion picture film or a videotape intended for public viewing either in a motion picture theater or on television, and who films or videotapes any interior or exterior scene in the City, shall pay a business license tax to the City consisting of a flat tax of Two Hundred Dollars ($200.00) for videotaping or filming activities occurring in the City.

(b) Every person who films or videotapes any interior or exterior scene in the City shall also first a procure a City Film Permit and pay the applicable Film Permit Fee prior to the commencement of filming The Film Permit Fee shall be in the amount specified in the Citywide Fee Schedule currently in effect at the time the Film Permit application is submitted."

SECTION 6. Section 3-2.05 entitled "Purchases, supplies, or services" of Chapter 2 of Title 3 of the Ontario Municipal Code is hereby amended to read as follows:

"Sec. 3-2.05. Purchases, supplies, or services.

(a) All demands, invoices, or claims for purchases, supplies, or services included within budgetary appropriations shall be presented in writing to the Executive Director of Finance. All such demands, invoices, or claims shall be fully itemized and verified as just and correct by the claimant or his/her authorized agent.

(b) Each demand shall bear the number of the purchase order issued for the materials or services rendered.

(c) Such demands, invoices, or claims shall be audited by the Executive Director of Finance or his/her authorized agent, who shall prepare a register of audited demands.

(d) Such demands, invoices, or claims shall be approved by the City Manager, or his/her authorized agent."

SECTION 7. If any section, subsection, subdivision, sentence, clause, or phrase in this Ordinance or any part thereof is for any reason held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council hereby declares that it would have adopted each section irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, or phrases be declared unconstitutional, invalid or ineffective.

SECTION 8. This Ordinance shall become effective on July 1, 2022.

SECTION 9. CEQA. The City Council finds that adoption of this Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15358 (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Moreover, the City Council finds that this Ordinance is also exempt under CEQA pursuant to Guidelines Section 15061(b)(3) (there exists no possibility that the activity will have a significant adverse effect on the environment).

SECTION 10. The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within fifteen (15) days of the adoption. The City Clerk shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this 21st day of June 2022.

PAUL S. LEON, MAYOR

ATTEST:

SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. 3211 was duly introduced at a special meeting of the City Council of the City of Ontario held May 26, 2022 and adopted at the regular meeting held June 21, 2022 by the following roll call vote, to wit:

AYES:	MAYOR/COUNCIL MEMBERS:	LEON, WAPNER, BOWMAN, DORST-PORADA AND VALENCIA
NOES:	COUNCIL MEMBERS:	NONE
ABSENT:	COUNCIL MEMBERS:	NONE

Sheila Mautz
SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 3211 duly passed and adopted by the Ontario City Council at their regular meeting held June 21, 2022 and that Summaries of the Ordinance were published on June 7, 2022 and June 28, 2022, in the Inland Valley Daily Bulletin newspaper.

Sheila Mautz
SHEILA MAUTZ, CITY CLERK

(SEAL)

INLAND VALLEY
DAILY BULLETIN
Local. News. Matters.
dailybulletin.com

Inland Valley Daily Bulletin - SB
3200 Guasti Rd. Suite 100
Ontario, California 91761
(909) 987-6397

See Proof on Next Page

0011540128

City of Ontario
303 East B Street
Ontario, California 91764

PROOF OF PUBLICATION
(2015.5 C.C.P.)

STATE OF CALIFORNIA
County of San Bernardino

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not party to or interested in the above-entitled matter. I am the principal clerk of the printer of Inland Valley Daily Bulletin - SB, a newspaper of general circulation, printed and published in the City of Ontario*, County of San Bernardino, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of County of San Bernardino, State of California, under the date of August 24, 1951, Case Number 70663. The notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

06/07/2022

I certify (or declare) under the penalty of perjury that the foregoing is true and correct.

Dated at Ontario, California

On this 7th day of June, 2022.

Eva Almeida

Signature

*Inland Valley Daily Bulletin - SB circulation includes the following cities: [UNKNOWN LIST]

PUBLIC NOTICE OF PROPOSED ADOPTION OF CITY OF ONTARIO ORDINANCE NO. 3211

NOTICE IS HEREBY GIVEN that on June 21, 2022, the City Council of the City of Ontario will consider adoption of proposed Ordinance No. 3211 entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING CHAPTER 2 OF TITLE 1, CHAPTER 6 OF TITLE 2, AND CHAPTERS 1 AND 2 OF TITLE 3 OF THE ONTARIO MUNICIPAL CODE RELATING TO THE PROCUREMENT OF ON-CALL SERVICES, APPROVAL AND MANUAL SIGNATURE REQUIREMENTS, AND FEES LOCATED IN THE CITYWIDE FEE SCHEDULE.

A copy of the full text of the proposed ordinance is available for review in the office of the City Clerk, City of Ontario, 303 East B Street, Ontario, California 91764, Monday through Thursday, 7:30 a.m. to 5:30 p.m. and Friday, 8:00 a.m. to 5:00 p.m.

Dated: May 26, 2022

s/CLAUDIA Y. ISBELL, MMC, ASSISTANT CITY CLERK
Inland Valley Daily Bulletin - SB
Published: 6/7/22

INLAND VALLEY
DAILY BULLETIN
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See Proof on Next Page

0011544461

City of Ontario
303 East B Street
Ontario, California 91764

PROOF OF PUBLICATION
(2015.5 C.C.P.)

STATE OF CALIFORNIA
County of Los Angeles

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not party to or interested in the above-entitled matter. I am the principal clerk of the printer of Inland Valley Daily Bulletin - SB, a newspaper of general circulation, printed and published in the City of Ontario*, County of Los Angeles, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of County of Los Angeles, State of California, under the date of June 15, 1945, Decree No. Pomo C-606. The notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

06/28/2022

I certify (or declare) under the penalty of perjury that the foregoing is true and correct.

Dated at Ontario, California

On this 28th day of June, 2022.

Eva Almeida

Signature
*Inland Valley Daily Bulletin - SB circulation includes the following cities: [UNKNOWN LIST]

PUBLIC NOTICE OF ADOPTION
OF CITY OF ONTARIO
ORDINANCE NO. 3211

NOTICE IS HEREBY GIVEN that on June 21, 2022, the City Council of the City of Ontario adopted Ordinance No. 3211 entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING CHAPTER 2 OF TITLE 1, CHAPTER 6 OF TITLE 2, AND CHAPTERS 1 AND 2 OF TITLE 3 OF THE ONTARIO MUNICIPAL CODE RELATING TO THE PROCUREMENT OF ON-CALL SERVICES, APPROVAL AND MANUAL SIGNATURE REQUIREMENTS, AND FEES LOCATED IN THE CITYWIDE FEE SCHEDULE.

Ordinance No. 3211 was adopted by the following roll call vote:

Ayes:	Leon, Wapner, Bowman, Dorst-Porada and Valencia
Noes:	None
Absent:	None

A certified copy of the full text of the Ordinance is available for review in the office of the City Clerk, City of Ontario, 303 East B Street, Ontario, California 91764, Monday through Thursday, 7:30 a.m. to 5:30 p.m. and Friday, 8:00 a.m. to 5:00 p.m. and at www.ontarioca.gov

Dated: June 21, 2022

s/CLAUDIA Y. ISBELL, MMC,
ASSISTANT CITY CLERK

Inland Valley Daily Bulletin - SB
Published: 6/28/22

RESOLUTION NO. 2024-035

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING AND ADOPTING LOCAL GUIDELINES FOR IMPLEMENTING THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (PUBLIC RESOURCES CODE §§ 21000 ET SEQ.)

WHEREAS, the California Legislature has amended the California Environmental Quality Act ("CEQA") (Pub. Resources Code §§ 21000 et seq.) and the State CEQA Guidelines (Cal. Code Regs, tit. 14, §§ 15000 et seq.), and the California courts have interpreted specific provisions of CEQA; and

WHEREAS, Section 21082 of CEQA requires all public agencies to adopt objectives, criteria and procedures for the evaluation of public and private projects undertaken or approved by such public agencies, and the preparation, if required, of environmental impact reports and negative declarations in connection with that evaluation; and

WHEREAS, the City of Ontario has revised its local guidelines for implementing CEQA to make them consistent with the current provisions and interpretations of CEQA and the State CEQA Guidelines.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND RESOLVED by the City Council of the City of Ontario, as follows:

SECTION 1. ***City Council Action.*** Based upon the findings and conclusions set forth above, the City Council hereby adopts the "City of Ontario Local Guidelines for Implementing the California Environmental Quality Act (2024 Revision)," attached hereto as "Exhibit A" and incorporated herein by this reference.

SECTION 2. ***Certification to Adoption.*** The Secretary shall certify to the adoption of the Resolution.

SECTION 3: ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 4: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 4th day of June 2024.

PAUL S. LEON, MAYOR

ATTEST:

SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2024-035 was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held June 4, 2024 by the following roll call vote, to wit:

AYES:	MAYOR/COUNCIL MEMBERS:	LEON, PORADA, WAPNER AND VALENCIA
NOES:	COUNCIL MEMBERS:	NONE
ABSENT:	COUNCIL MEMBERS:	BOWMAN

Sheila Mautz
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2024-035 duly passed and adopted by the Ontario City Council at their regular meeting held June 4, 2024.

Sheila Mautz
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A:

2024 City of Ontario Local Guidelines for Implementation of the California Environmental Quality Act

(Document follows this page)

2024

LOCAL GUIDELINES

FOR IMPLEMENTING THE

CALIFORNIA ENVIRONMENTAL QUALITY ACT

FOR

CITY OF ONTARIO

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LOCAL GUIDELINES
FOR IMPLEMENTING THE
CALIFORNIA ENVIRONMENTAL QUALITY ACT

(2024)

1. GENERAL PROVISIONS, PURPOSE AND POLICY.

1.01 GENERAL PROVISIONS.

These Local Guidelines ("Local Guidelines") are to assist the City of Ontario ("City") in implementing the provisions of the California Environmental Quality Act ("CEQA"). These Local Guidelines are consistent with the Guidelines for the Implementation of CEQA ("State CEQA Guidelines"), which have been promulgated by the California Natural Resources Agency for the guidance of state and local agencies in California. These Local Guidelines have been adopted pursuant to California Public Resources Code section 21082.

1.02 PURPOSE.

The purpose of these Local Guidelines is to help the City accomplish the following basic objectives of CEQA:

(a) To enhance and provide long-term protection for the environment, while providing a decent home and satisfying living environment for every Californian;
(b) To provide information to governmental decision-makers and the public regarding the potential significant environmental effects of the proposed project;
(c) To provide an analysis of the environmental effects of future actions associated with the project to adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project;
(d) To identify ways that environmental damage can be avoided or significantly reduced;
(e) To prevent significant avoidable environmental damage through utilization of feasible project alternatives or mitigation measures; and
(f) To disclose and demonstrate to the public the reasons why a governmental agency approved the project in the manner chosen. Public participation is an essential part of the CEQA process. Each public agency should encourage wide public involvement, formal and informal, in order to receive and evaluate public reactions to environmental issues related to a public agency's activities. Such involvement should include, whenever possible, making environmental information available in electronic format on the Internet, on a web site maintained or utilized by the public agency.

1.03 APPLICABILITY.

These Local Guidelines apply to any activity that constitutes a "project," as defined in Local Guidelines Section 11.57, for which the City is the Lead Agency or a Responsible Agency. These Local Guidelines are also intended to assist the City in determining whether a proposed

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activity constitutes a project that is subject to CEQA review, or whether the activity is exempt from CEQA.

1.04 REDUCING DELAY AND PAPERWORK.

The State CEQA Guidelines encourage local governmental agencies to reduce delay and paperwork by, among other things:

(a) Integrating the CEQA process into early planning review; to this end, the project approval process and these procedures, to the maximum extent feasible, are to run concurrently, not consecutively;
(b) Identifying projects which fit within categorical or other exemptions and are therefore exempt from CEQA processing;
(c) Using initial studies to identify significant environmental issues and to narrow the scope of Environmental Impact Reports (EIRs);
(d) Using a Negative Declaration when a project, not otherwise exempt, will not have a significant effect on the environment;
(e) Consulting with state and local responsible agencies before and during the preparation of an EIR so that the document will meet the needs of all the agencies which will use it;
(f) Allowing applicants to revise projects to eliminate possible significant effects on the environment, thereby enabling the project to qualify for a Negative Declaration rather than an EIR;
(g) Integrating CEQA requirements with other environmental review and consultation requirements;
(h) Emphasizing consultation before an EIR is prepared, rather than submitting adverse comments on a completed document;
(i) Combining environmental documents with other documents, such as general plans;
(j) Eliminating repetitive discussions of the same issues by using EIRs on programs, policies or plans and tiering from statements of broad scope to those of narrower scope;
(k) Reducing the length of EIRs by means such as setting appropriate page limits;
(l) Preparing analytic, rather than encyclopedic EIRs;
(m) Mentioning insignificant issues only briefly;
(n) Writing EIRs in plain language;
(o) Following a clear format for EIRs;
(p) Emphasizing the portions of the EIR that are useful to decision-makers and the public and reducing emphasis on background material;
(q) Incorporating information by reference; and
(r) Making comments on EIRs as specific as possible.

1.05 COMPLIANCE WITH STATE LAW.

These Local Guidelines are intended to implement the provisions of CEQA and the State CEQA Guidelines, and the provisions of CEQA and the State CEQA Guidelines shall be fully complied with even though they may not be set forth or referred to herein.

1.06 TERMINOLOGY.

The terms "must" or "shall" identify mandatory requirements. The terms "may" and "should" are permissive, with the particular decision being left to the discretion of the City.

1.07 PARTIAL INVALIDITY.

In the event any part or provision of these Local Guidelines shall be determined to be invalid, the remaining portions that can be separated from the invalid unenforceable provisions shall continue in full force and effect.

1.08 ELECTRONIC DELIVERY OF COMMENTS AND NOTICES.

Individuals may file a written request to receive copies of public notices provided for under these Local Guidelines or the State CEQA Guidelines. The requestor may elect to receive these notices via email rather than regular mail. Notices sent by email are deemed delivered when the staff person sending the email sends it to the last email address provided by the requestor to the City. Any request to receive public notices shall be in writing and shall be renewed annually.

Individuals may also submit comments on the CEQA documentation for a project via email. Comments submitted via email shall be treated as written comments for all purposes. Comments sent to the City via email are deemed received when they actually arrive in an email account of a staff person who has been designated or identified as the point of contact for a particular project.

The City must also post certain environmental documents (such as Draft and Final Environmental Impact Reports, Draft Negative Declarations and Draft Mitigated Negative Declarations) and CEQA notices (such as Notices of Preparation, Notices of Availability, Notices of Intent to Adopt a Negative Declaration, Notices of Exemption, and Notices of Determination) on its website, if any.

(Reference: Pub. Resources Code, §§ 21082.1, 21091(d)(3), 21092.2.)

1.09 THE CITY MAY CHARGE REASONABLE FEES FOR REPRODUCING ENVIRONMENTAL DOCUMENTS.

A public agency may charge and collect a reasonable fee from members of the public that request a copy of an environmental document, so long as the fee does not exceed the cost of reproduction. The kinds of "environmental documents" that CEQA specifically allows public agencies to seek reimbursement for include: initial studies, negative declarations, mitigated negative declarations, draft and final EIRs, and documents prepared as a substitute for an EIR, negative declaration, or mitigated negative declaration.

The City shall make CEQA-related documents (e.g., Negative Declarations, Mitigated Negative Declarations, Draft EIRs, Final EIRs, and notices relating to these documents) available to the public-at-large on its website. Requests for documents made pursuant to the California Public Records Act must comply with the Government Code. (See, for example, Government Code section 7922.570 for information regarding providing documents in electronic format.)

1.10 TIME OF PREPARATION

Before granting any approval of a project subject to CEQA, the Lead Agency or Responsible Agency shall consider a Final EIR, Negative Declaration, Mitigated Negative Declaration, or another document authorized by the State CEQA Guidelines to be used in the place of an EIR or Negative Declaration.

Choosing the precise time for CEQA compliance involves a balancing of competing factors. EIRs, Negative Declarations, and Mitigated Negative Declarations should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment.

With public projects, at the earliest feasible time, project sponsors shall incorporate environmental considerations into project conceptualization, design, and planning. CEQA compliance should be completed prior to acquisition of a site for a public project.

To implement the above principles, the City shall not undertake actions concerning the proposed public project that would have a significant adverse effect or limit the choice of alternatives or mitigation measures, before completion of CEQA compliance. For example, the City shall not:

(A) Formally make a decision to proceed with the use of a site for facilities which would require CEQA review, regardless of whether the City has made any final purchase of the site for these facilities, except that the City may designate a preferred site for CEQA review and may enter into land acquisition agreements when the City has conditioned its future use of the site on CEQA compliance.

(B) Otherwise take any action that gives impetus to a planned or foreseeable project in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project.

With private projects, the City shall encourage the project proponent to incorporate environmental considerations into project conceptualization, design, and planning at the earliest feasible time.

While mere interest in, or inclination to support, a project does not constitute approval, a public agency entering into preliminary agreements regarding a project prior to approval shall not, as a practical matter, commit the agency to the project. For example, the City shall not grant any vested development entitlements prior to compliance with CEQA. Further, any such pre-approval agreement should, for example:

(A) Condition the agreement on compliance with CEQA;
(B) Not bind any party, or commit any party, to a definite course of action, prior to CEQA compliance;
(C) Not restrict the Lead Agency from considering any feasible mitigation measures and alternatives, including the “no project” alternative; and
(D) Not restrict the Lead Agency from denying the project.

The City's environmental document preparation and review should be coordinated in a timely fashion with the City's existing planning, review, and project approval processes. These procedures, to the maximum extent feasible, are to run concurrently, not consecutively.

(See State CEQA Guidelines, § 15004; *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116.)

1.11 STATE AGENCY FURLOUGHS.

Due to budget concerns, the State may institute mandatory furlough days for state government agencies. Local agencies may also change their operating hours.

Because state and local agencies may enact furloughs that limit their operating hours, if the City has time-sensitive materials or needs to consult with a state agency, the City should check with the applicable state agency office or with the City's attorney to ensure compliance with all applicable deadlines.

1.12 ENVIRONMENTAL COMPLIANCE FOR CITY-INITIATED PROJECTS..

In an effort to provide consistent CEQA review and coordination of City-initiated projects, an Environmental Review Coordinator ("ERC") has been designated within the Planning Department to aid City departments on the ever-changing environmental statutes and to create a CEQA repository. This section 1.11 only applies to City-initiated projects.

To achieve the desired level of review, the project manager for each City-initiated project* will contact the ERC following project inception and provide the ERC with a written description of the project, including any preliminary plans, special studies completed, and other information that may be helpful evaluating the project. The ERC will review the information and determine if 1) existing CEQA documents are sufficient to address the potential impacts of the project; 2) if existing CEQA documents may be used to tier off to provide the necessary CEQA review; 3) if a new CEQA review is necessary for the project, or 4) an exemption from CEQA applies to the project. Additionally, the ERC will provide direction to the project manager on the level of CEQA review required for the project (e.g. Negative Declaration, Environmental Impact Report ("EIR"), etc.).

Once a memorandum on the scope/preliminary plans for a project has been submitted to the ERC, the ERC will work with the project manager to complete the CEQA review in-house to the extent possible. Should the need arise for studies or an EIR beyond staff's ability to complete, the ERC shall work with the project manager to 1) develop a Request for Proposal ("RFP") for the necessary services; 2) review the RFPs with the project manager and assist in the selection of a consultant; 3) prepare the consultant contract for the services; 4) provide coordination between the consultant and the project manager; 5) coordinate preparation of the CEQA document; 6) review and comment on the CEQA document; 7) review invoices/billing by the consultant; and 8) ensure compliance with established legal procedures, filings, etc.

Upon successful completion of the CEQA review, the ERC shall retain copies of pertinent CEQA information, including, but not limited to, CEQA documents and Notice of Determinations. The central CEQA repository will provide ease of access to previous CEQA documents that may be needed for future actions (e.g. grant applications, project modifications, new projects, etc.).

**As determined under CEQA*

(Section added October 2011)

2. LEAD AND RESPONSIBLE AGENCIES

2.01 LEAD AGENCY PRINCIPLE.

The City will be the Lead Agency if it will have principal responsibility for carrying out or approving a project. Where a project is to be carried out or approved by more than one public agency, only one agency shall be responsible for the preparation of environmental documents. This agency shall be called the Lead Agency.

(Reference: State CEQA Guidelines, §§ 15050, 15367.)

2.02 SELECTION OF LEAD AGENCY.

Where two or more public agencies will be involved with a project, the Lead Agency shall be designated according to the following criteria:

(a) If the project will be carried out by a public agency, that agency shall be the Lead Agency even if the project will be located within the jurisdiction of another public agency; or

(b) If the project will be carried out by a nongovernmental person or entity, the Lead Agency shall be the public agency with the greatest responsibility for supervising and approving the project as a whole.

The Lead Agency will normally be the agency with general governmental powers, rather than an agency with a single or limited purpose. (For example, a city that will provide a public service or utility to the project serves a limited purpose.) If two or more agencies meet this criteria equally, the agency that acts first on the project will normally be the Lead Agency.

If two or more public agencies have a substantial claim to be the Lead Agency under either (a) or (b), they may designate one agency as the Lead Agency by agreement. An agreement may also provide for cooperative efforts by contract, joint exercise of powers, or similar devices. If the agencies cannot agree which agency should be the Lead Agency for preparing the environmental document, any of the disputing public agencies or the project applicant may submit the dispute to the Office of Planning and Research. Within 21 days of receiving the request, the Office of Planning and Research will designate the Lead Agency. The Office of Planning and Research shall not designate a Lead Agency in the absence of a dispute. A "dispute" means a contested, active difference of opinion between two or more public agencies as to which of those agencies shall prepare any necessary environmental document. A dispute exists when each of those agencies claims that it either has or does not have the obligation to prepare that environmental document.

(Reference: State CEQA Guidelines, § 15051.)

2.03 DUTIES OF A LEAD AGENCY.

As a Lead Agency, the City shall decide whether a Negative Declaration, Mitigated Negative Declaration or an EIR will be required for a project and shall prepare, or cause to be prepared, and consider the document before making its decision on whether and how to approve

the project. The documents may be prepared by Staff or by private consultants pursuant to a contract with the City. However, the City shall independently review and analyze all draft and final EIRs or Negative Declarations prepared for a project and shall find that the EIR or Negative Declaration reflects the independent judgment of the City prior to approval of the document. If a Draft EIR or Final EIR is prepared under a contract with the City, the contract must be executed within forty-five (45) days from the date on which the City sends a Notice of Preparation. (See Local Guidelines Section 7.02.) The City, however, may take longer to execute the contract if the project applicant and the City mutually agree to an extension of the 45-day time period. (Pub. Resources Code, § 21151.5; see also Local Guidelines Section 7.02.)

During the process of preparing an EIR, the City, as Lead Agency, shall have the following duties:

(a) If a California Native American tribe has requested consultation, within 14 days after determining that an application for a project is complete or a decision to undertake a project, the City shall begin consultation with the California Native American tribes (see Local Guidelines Section 7.07);

(b) Immediately after deciding that an EIR is required for a project, the City shall send to the Office of Planning and Research and each Responsible Agency a Notice of Preparation (Form "G") stating that an EIR will be prepared (see Local Guidelines Section 7.03);

(c) Prior to release of an EIR, if the California Native American tribe that is culturally affiliated with the geographic area of a project requests in writing to be informed of any proposed project, the City shall begin consultation with the tribe consistent with California law and Local Guidelines Section 7.07;

(d) The City shall prepare or cause to be prepared the Draft EIR for the project (see Local Guidelines Sections 7.06 and 7.18);

(e) Once the Draft EIR is completed, the City shall file a Notice of Completion (Form "H") with the Office of Planning and Research (see Local Guidelines Section 7.25);

(f) The City shall consult with state, federal and local agencies that exercise authority over resources that may be affected by the project for their comments on the completed Draft EIR (see, e.g., Local Guidelines Sections 5.02, 5.16, Section 7.26);

(g) The City shall provide public notice of the availability of a Draft EIR (Form "K") at the same time that it sends a Notice of Completion to the Office of Planning and Research (see Local Guidelines Section 7.25);

(h) The City shall evaluate comments on environmental issues received from persons who reviewed the Draft EIR and shall prepare or cause to be prepared a written response to all comments that raise significant environmental issues and that were timely received during the public comment period. A written response must be provided to all public agencies who commented on the project during the public review period at least ten (10) days prior to certifying an EIR (see Local Guidelines Section 7.30);

(i) The City shall prepare or cause to be prepared a Final EIR before approving the project (see Local Guidelines Section 7.31);

(j) The City shall certify that the Final EIR has been completed in compliance with CEQA and has been reviewed by the City Council (see Local Guidelines Section 7.33); and

(k) The City shall include in the Final EIR any comments received from a Responsible Agency on the Notice of Preparation or the Draft EIR (see Local Guidelines Sections 2.08, 7.30 and 7.31).

2.04 CEQA DETERMINATIONS MADE BY NON-ELECTED BODY; PROCEDURE TO APPEAL SUCH DETERMINATIONS.

As Lead Agency, the City may charge a non-elected decisionmaking body with the responsibility of making a finding of exemption or adopting, certifying or authorizing environmental documents. Any such determination, however, shall be subject to the City's procedures allowing for the appeal of the CEQA determination of any non-elected body to the City. In the absence of a procedure governing such appeal, any CEQA determination made by a non-elected decisionmaker shall be appealable to the City Council within ten (10) days of the non-elected decisionmaker's determination. If the non-elected decisionmaker's CEQA determination is not timely appealed as set forth herein, the non-elected decisionmaker's determination shall be final.

In the event the City Council has delegated authority to a subsidiary board or official to approve a project, the City hereby delegates to that subsidiary board or official the authority to make all necessary CEQA determinations, including whether an EIR, Negative Declaration, Mitigated Negative Declaration or exemption shall be required for any project. A subsidiary board or official's CEQA determination shall be subject to appeal as set forth above.

(Reference: State CEQA Guidelines, §§ 15061(e), 15074(f), 15090(b).)

2.05 PROJECTS RELATING TO DEVELOPMENT OF HAZARDOUS WASTE AND OTHER SITES.

An applicant for a development project must submit a signed statement to the City, as Lead Agency, stating whether the project and any alternatives are located on a site that is included in any list compiled by the Secretary for Environmental Protection of the California Environmental Protection Agency ("California EPA") listing hazardous waste sites and other specified sites located in the City's boundaries. The applicant's statement must contain the following information:

(a) The applicant's name, address, and phone number;
(b) Address of site, and local agency (city/county);
(c) Assessor's book, page, and parcel number; and
(d) The list which includes the site, identification number, and date of list.

Before accepting as complete an application for any development project as defined in Local Guidelines Section 11.17, the City, as Lead Agency, shall consult lists compiled by the Secretary for Environmental Protection of the California EPA pursuant to Government Code section 65962.5 listing hazardous waste sites and other specified sites located in the City's boundaries. When acting as Lead Agency, the City shall notify an applicant for a development project if the project site is located on such a list and not already identified. In the Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration (see Local Guidelines Section 6.04) or the Notice of Preparation of Draft EIR (see Local Guidelines Section 7.03), the City shall specify the California EPA list, if any, that includes the project site, and shall provide the information contained in the applicant's statement.

(Reference: Gov. Code, § 65962.5.)

2.06 RESPONSIBLE AGENCY PRINCIPLE.

When a project is to be carried out or approved by more than one public agency, all public agencies other than the Lead Agency that have discretionary approval power over the project shall be identified as Responsible Agencies.

(Reference: State CEQA Guidelines, § 15381.)

2.07 DUTIES OF A RESPONSIBLE AGENCY.

When it is identified as a Responsible Agency, the City shall consider the environmental documents prepared or caused to be prepared by the Lead Agency and reach its own conclusions on whether and how to approve the project involved. The City shall also both respond to consultation and attend meetings as requested by the Lead Agency to assist the Lead Agency in preparing adequate environmental documents. The City should also review and comment on Draft EIRs, Negative Declarations, and Mitigated Negative Declarations. Comments shall be limited to those project activities that are within the City's area of expertise or are required to be carried out or approved by the City or are subject to the City's powers.

As a Responsible Agency, the City may identify significant environmental effects of a project for which mitigation is necessary. As a Responsible Agency, the City may submit to the Lead Agency proposed mitigation measures that would address those significant environmental effects. If mitigation measures are required, the City should submit to the Lead Agency complete and detailed performance objectives for such mitigation measures that would address the significant environmental effects identified, or refer the Lead Agency to appropriate, readily available guidelines or reference documents. Any mitigation measures submitted to the Lead Agency by the City, when acting as a Responsible Agency, shall be limited to measures that mitigate impacts to resources that are within the City's authority. For private projects, the City, as a Responsible Agency, may require the project proponent to provide such information as may be required and to reimburse the City for all costs incurred by it in reporting to the Lead Agency.

(Reference: State CEQA Guidelines, § 15096.)

2.08 RESPONSE TO NOTICE OF PREPARATION BY RESPONSIBLE AGENCIES.

Within thirty (30) days of receipt of a Notice of Preparation of an EIR, the City, as a Responsible Agency, shall specify to the Lead Agency the scope and content of the environmental information related to the City's area of statutory responsibility in connection with the proposed project. At a minimum, the response shall identify the significant environmental issues and possible alternatives and mitigation that the City, as a Responsible Agency, will need to have explored in the Draft EIR. Such information shall be specified in writing, shall be as specific as possible, and shall be communicated to the Lead Agency, by certified mail, email, or any other method of transmittal that provides it with a record that the response was received. The Lead Agency shall incorporate this information into the EIR.

(Reference: Pub. Resources Code, § 21080.4; State CEQA Guidelines, § 15103.)

2.09 USE OF FINAL EIR OR NEGATIVE DECLARATION BY RESPONSIBLE AGENCIES.

The City, as a Responsible Agency, shall consider the Lead Agency's Final EIR or Negative Declaration before acting upon or approving a proposed project. As a Responsible Agency, the City must independently review and consider the adequacy of the Lead Agency's environmental documents prior to approving any portion of the proposed project. In certain instances, the City, in its role as a Responsible Agency, may require that a Subsequent EIR or a Supplemental EIR be prepared to fully address those aspects of the project over which the City has approval authority. Mitigation measures and alternatives deemed feasible and relevant to the City's role in carrying out the project shall be adopted. Findings that are relevant to the City's role as a Responsible Agency shall be made. After the City decides to approve or carry out part of a project for which an EIR or negative declaration has previously been prepared by the Lead Agency, the City, as Responsible Agency, should file a Notice of Determination with the County Clerk within five (5) days of approval, but need not state that the Lead Agency's EIR or Negative Declaration complies with CEQA. The City, as Responsible Agency, should state that it considered the EIR or Negative Declaration as prepared by a Lead Agency.

(Reference: State CEQA Guidelines, § 15096.)

2.10 SHIFT IN LEAD AGENCY RESPONSIBILITIES.

The City, as a Responsible Agency, shall assume the role of the Lead Agency if any one of the following three conditions is met:

(a) The Lead Agency did not prepare any environmental documents for the project, and the statute of limitations has expired for a challenge to the action of the appropriate Lead Agency;

(b) The Lead Agency prepared environmental documents for the project, and all of the following conditions apply:

  (1) A Subsequent or Supplemental EIR is required;

  (2) The Lead Agency has granted a final approval for the project; and

  (3) The statute of limitations has expired for a challenge to the action of the appropriate Lead Agency; or

(c) The Lead Agency prepared inadequate environmental documents without providing public notice of a Negative Declaration or sending Notice of Preparation of an EIR to Responsible Agencies and the statute of limitations has expired for a challenge to the action of the appropriate Lead Agency.

(Reference: State CEQA Guidelines, § 15052.)

3. ACTIVITIES EXEMPT FROM CEQA

3.01 ACTIONS SUBJECT TO CEQA.

CEQA applies to discretionary projects proposed to be carried out or approved by public agencies such as the City. If the proposed activity does not come within the definition of "project" contained in Local Guidelines Section 11.57, it is not subject to environmental review under CEQA.

The term "project," as defined by CEQA, does not include:

(a) Proposals for legislation to be enacted by the State Legislature;
(b) Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, and general policy and procedure making (except as provided in Local Guidelines Section 11.57);
(c) The submittal of proposals to a vote of the people in response to a petition drive initiated by voters, or the enactment of a qualified voter-sponsored initiative under California Constitution Art. II, Section 11(a) and Election Code Section 9214;
(d) The creation of government funding mechanisms or other government fiscal activities that do not involve any commitment to any specific project that may have a potentially significant physical impact on the environment. Government funding mechanisms may include, but are not limited to, assessment districts and community facilities districts;
(e) Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment; and
(f) Activities that do not result in a direct or reasonably foreseeable indirect physical change in the environment.

(Reference: State CEQA Guidelines, §§ 15060(c), 15378.)

3.02 MINISTERIAL ACTIONS.

Ministerial actions are not subject to CEQA review. A ministerial action is one that is approved or denied by a decision that a public official or a public agency makes that involves only the use of fixed standards or objective measurements without personal judgment or discretion.

When a project involves an approval that contains elements of both a ministerial and discretionary nature, the project will be deemed to be discretionary and subject to the requirements of CEQA. The decision whether the approval of a proposed project or activity is ministerial in nature may involve or require, to some extent, interpretation of the language of the legal mandate, and should be made on a case-by-case basis. The following is a non-exclusive list of examples of ministerial activities:

(a) Issuance of business licenses;
(b) Approval of final subdivision maps and final parcel maps;
(c) Approval of individual utility service connections and disconnections;
(d) Issuance of licenses;
(e) Issuance of a permit to do street work;

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(f) Issuance of building permits where the Lead Agency does not retain significant discretionary power to modify or shape the project; and

(g) Until January 1, 2024, approval of an application to install an emergency standby generator to serve a macro cell tower where conditions set forth in Government Code section 65850.75 are met.

(Reference: State CEQA Guidelines, § 15268.)

3.03 EXEMPTIONS IN GENERAL.

CEQA and the State CEQA Guidelines exempt certain activities and provide that local agencies should further identify and describe certain exemptions. The requirements of CEQA and the obligation to prepare an EIR, Negative Declaration or Mitigated Negative Declaration generally do not apply to the exempt activities that are set forth in CEQA, the State CEQA Guidelines and Chapter 3 of these Local Guidelines.

(Reference: State CEQA Guidelines, §§ 15260 – 15332.)

3.04 NOTICE OF EXEMPTION.

After approval of an exempt project, a "Notice of Exemption" (Form "A") may be filed by the City or its representatives with the County Clerk of each county in which the activity will be located. The Notice of Exemption must be filed electronically with the County Clerk if that option is offered by the County Clerk. When the Lead Agency files a Notice of Exemption with the County Clerk, it must also file the Notice of Exemption with the State Clearinghouse in the Office of Planning and Research ("OPR"). After filing, the City must additionally post the Notice of Exemption on the City's website, if any. The City is generally not required to file a Notice of Exemption after approving a project that it finds exempt from CEQA, though there are circumstances where a Notice of Exemption must be filed. Please see Local Guidelines Section 3.12 for certain circumstances in which the Lead Agency is required to file a Notice of Exemption.

The filing of a Notice of Exemption, when appropriate, is recommended for City actions because it shortens the statute of limitations to challenge the City's exemption determination under CEQA from 180 days to 35 days. The County Clerk must post a Notice of Exemption within twenty-four (24) hours of receipt, and the Notice must remain posted for thirty (30) days. The 30 day posting requirement excludes the first day of posting and includes the last day of posting. On the 30th day, the Notice of Exemption must be posted for the entire day. Although no California Department of Fish and Wildlife ("DFW") filing fee is applicable to exempt projects, most counties customarily charge a documentary handling fee to pay for record keeping on behalf of the DFW. Refer to the Index in the County Clerk Memo to determine if such a fee will be required for the project.

The Notice of Exemption must, among other things, identify the person undertaking the project, including any person undertaking an activity that receives financial assistance from the City as part of the project or the person receiving a lease, permit, license, certificate, or other entitlement for use from the City as part of the project. Certain counties require the name and address of an applicant to be included in the "Project Applicant" box of the Notice of Exemption,

even when the only project proponent is the City; in these counties, if the City is the only project proponent, the City's name and address should be provided in the "Project Applicant" box of the Notice of Exemption. Check the county's requirements before submitting the Notice of Exemption for filing and posting.

The Notice of Exemption may be filed by the project applicant, rather than the Lead Agency, in certain circumstances. Specifically, the Lead Agency may direct the project applicant to file the Notice of Exemption where the activity that the Lead Agency has determined is exempt from CEQA either:

(a) is undertaken by a *person* (not a public agency) and is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies; or

(b) involves the issuance to a *person* (not a public agency) of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

(See Pub. Resources Code §§21065 (b), (c), 21152). Where the Notice of Exemption is filed by a project applicant rather than the Lead Agency, the applicant must attach a Certificate of Determination to the Notice of Exemption to be filed. The Certificate of Determination may be in the form of a certified copy of an existing document or record of the Lead Agency. Alternatively, the Lead Agency may prepare a Certificate of Determination (see Form "B") stating that the activity is exempt from CEQA, and the Lead Agency may provide the Certificate of Determination to the applicant. The applicant must attach the Certificate of Determination to the Notice of Exemption to be filed.

(Reference: Pub. Resources Code, § 21152; State CEQA Guidelines, § 15062.)

3.05 DISAPPROVED PROJECTS.

CEQA does not apply to projects that the Lead Agency rejects or disapproves. Even if a project for which an EIR, Negative Declaration, or Mitigated Negative Declaration has been prepared is ultimately disapproved, the project applicant shall not be relieved of its obligation to pay the costs incurred to prepare the EIR, Negative Declaration, or Mitigated Negative Declaration for the project.

(Reference: State CEQA Guidelines, §§ 15061(b)(4), 15270.)

3.06 PROJECTS WITH NO POSSIBILITY OF SIGNIFICANT EFFECT.

Where it can be seen with absolute certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is exempt from CEQA.

(Reference: State CEQA Guidelines, § 15061(b)(3).)

3.07 EMERGENCY PROJECTS.

The following types of emergency projects are exempt from CEQA (the term "emergency" is defined in Local Guidelines Section 11.20):

(a) Work in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Section 8550 of the Government Code. This includes projects that will remove, destroy, or significantly alter a historical resource when that resource represents an imminent threat to the public of bodily harm or of damage to adjacent property or when the project has received a determination by the State Office of Historic Preservation pursuant to Section 5028(b) of the Public Resources Code.

(b) Emergency repairs to publicly or privately owned service facilities necessary to maintain service essential to the public health, safety, or welfare. Emergency repairs include those that require a reasonable amount of planning to address an anticipated emergency.

(c) Projects necessary to prevent or mitigate an emergency. This does not include long-term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short-term, but this exclusion does not apply (i) if the anticipated period of time to conduct an environmental review of such a long-term project would create a risk to public health, safety, or welfare, or (ii) if activities (such as fire or catastrophic risk mitigation or modifications to improve facility integrity) are proposed for existing facilities in response to an emergency at a similar existing facility.

(d) Projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, provided that the project is within the existing right of way of that highway and is initiated within one year of the damage occurring. Highway shall have the same meaning as defined in Section 360 of the Vehicle Code. This exemption does not apply to highways designated as official state scenic highways, nor to any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

(e) Seismic work on highways and bridges pursuant to Streets and Highways Code section 180.2.

(Reference: State CEQA Guidelines, § 15269.)

3.08 FEASIBILITY AND PLANNING STUDIES.

A project that involves only feasibility or planning studies for possible future actions which the City has not yet approved, adopted, or funded is exempt from CEQA.

(Reference: State CEQA Guidelines, § 15262.)

3.09 RATES, TOLLS, FARES, AND CHARGES.

The establishment, modification, structuring, restructuring or approval of rates, tolls, fares or other charges by the City that the City finds are for one or more of the purposes listed below are exempt from CEQA.

(a) Meeting operating expenses, including employee wage rates and fringe benefits;
(b) Purchasing or leasing supplies, equipment or materials;
(c) Meeting financial reserve needs and requirements; or
(d) Obtaining funds for capital projects necessary to maintain service within existing service areas.

When the City determines that one of the aforementioned activities pertaining to rates, tolls, fares, or charges is exempt from the requirements of CEQA, it shall incorporate written findings setting forth the specific basis for the claim of exemption in the record of any proceeding in which such an exemption is claimed.

(Reference: State CEQA Guidelines, § 15273.)

3.10 PIPELINES WITHIN A PUBLIC RIGHT-OF-WAY AND LESS THAN ONE MILE IN LENGTH.

Projects that are for the installation of a new pipeline or the maintenance, repair, restoration, reconditioning, relocation, replacement, removal, or demolition of an existing pipeline and that are:

(a) in a public street or highway or any other public right-of-way; and
(b) less than one mile in length

shall be exempt from CEQA requirements. See Public Resources Code section 21080.21.

"Pipeline" includes subsurface facilities but does not include any surface facility related to the operation of the underground facility.

(Reference: Public Resources Code, § 21080.21.)

3.11 PIPELINES OF LESS THAN EIGHT MILES IN LENGTH.

Projects that are for the inspection, maintenance, repair, restoration, reconditioning, relocation, replacement, or removal of an existing pipeline, or any valve, flange, meter, or other piece of equipment that is directly attached to the pipeline shall be exempt from CEQA requirements if all of the following conditions are met:

(a) The project is less than eight miles in length.
(b) Notwithstanding the project length, actual construction and excavation activities undertaken to achieve the maintenance, repair, restoration, reconditioning, relocation, replacement, or removal of an existing pipeline are not undertaken over a length of more than one-half mile at any one time.
(c) The project consists of a section of pipeline that is not less than eight miles from any section of pipeline that has been subject to an exemption pursuant to CEQA in the past 12 months.
(d) The project is not solely for the purpose of excavating soil that is contaminated by hazardous materials, and, to the extent not otherwise expressly required by law, the party undertaking the project immediately informs the lead agency of the discovery of contaminated soil.

(e) To the extent not otherwise expressly required by law, the person undertaking the project has, in advance of undertaking the project, prepared a plan that will result in notification of the appropriate agencies so that they may take action, if determined to be necessary, to provide for the emergency evacuation of members of the public who may be located in close proximity to the project.

(f) Project activities are undertaken within an existing right-of-way and the right-of-way is restored to its condition prior to the project.

(g) The project applicant agrees to comply with all conditions otherwise authorized by law, imposed by the city or county planning department as part of any local agency permit process, that are required to mitigate potential impacts of the proposed project, and to otherwise comply with the Keene-Nejedly California Wetlands Preservation Act (Chapter 7 (commencing with Section 5810) of Division 5), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), and other applicable state laws, and with all applicable federal laws.

If a project meets all of the requirements for this exemption, the person undertaking the project shall do all of the following:

(a) Notify, in writing, any affected public agency, including, but not limited to, any public agency having permit, land use, environmental, public health protection, or emergency response authority of this exemption.

(h) Provide notice to the public in the affected area in a manner consistent with paragraph (3) of Public Resources Code section 21092(b).

(i) In the case of private rights-of-way over private property, receive from the underlying property owner permission for access to the property.

(j) Comply with all conditions otherwise authorized by law, imposed by the city or county planning department as part of any local agency permit process, that are required to mitigate potential impacts of the proposed project, and otherwise comply with the Keene-Nejedly California Wetlands Preservation Act (Chapter 7 (commencing with Section 5810) of Division 5), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), and other applicable state laws, and with all applicable federal laws.

This exemption does not apply to a project in which the diameter of the pipeline is increased or to a project undertaken within the boundaries of an oil refinery.

For purposes of this exemption, the following definitions apply:

(a) “Pipeline” includes every intrastate pipeline used for the transportation of hazardous liquid substances or highly volatile liquid substances, including a common carrier pipeline, and all piping containing those substances located within a refined products bulk loading facility which is owned by a common carrier and is served by a pipeline of that common carrier, and the common carrier owns and serves by pipeline at least five such facilities in the state. “Pipeline” does not include the following:

    (1) An interstate pipeline subject to Part 195 of Title 49 of the Code of Federal Regulations.

(2) A pipeline for the transportation of a hazardous liquid substance in a gaseous state.
(3) A pipeline for the transportation of crude oil that operates by gravity or at a stress level of 20 percent or less of the specified minimum yield strength of the pipe.
(4) Transportation of petroleum in onshore gathering lines located in rural areas.
(5) A pipeline for the transportation of a hazardous liquid substance offshore located upstream from the outlet flange of each facility on the Outer Continental Shelf where hydrocarbons are produced or where produced hydrocarbons are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream.
(6) Transportation of a hazardous liquid by a flow line.
(7) A pipeline for the transportation of a hazardous liquid substance through an onshore production, refining, or manufacturing facility, including a storage or in plant piping system associated with that facility.
(8) Transportation of a hazardous liquid substance by vessel, aircraft, tank truck, tank car, or other vehicle or terminal facilities used exclusively to transfer hazardous liquids between those modes of transportation.

(Reference: State CEQA Guidelines, § 15284.)

3.12 CERTAIN RESIDENTIAL HOUSING PROJECTS.

CEQA does not apply to the construction, conversion, or use of residential housing if the project meets all of the general requirements described in Section A below and satisfies the specific requirements for any one of the following three categories: (1) agricultural housing (Section B below), (2) affordable housing projects in urbanized areas (Section C below), or (3) affordable housing projects near major transit stops (Section D below).

A. General Requirements. The construction, conversion, or use of residential housing units affordable to low-income households (as defined in Local Guidelines Section 11.36) located on an infill site in an urbanized area is exempt from CEQA if all of the following general requirements are satisfied:

(1) The project is consistent with:

(a) Any applicable general plan, specific plan, or local coastal program, including any mitigation measures required by such plan or program, as that plan or program existed on the date that the application was deemed complete; and
(b) Any applicable zoning ordinance, as that zoning ordinance existed on the date that the application was deemed complete. However, the project may be inconsistent with zoning if the zoning is inconsistent with the general plan and the project site has not been rezoned to conform to the general plan;

(2) Community level environmental review has been adopted or certified;

(3) The project and other projects approved prior to the approval of the project can be adequately served by existing utilities, and the project applicant has paid, or has committed to pay, all applicable in-lieu or development fees;

(4) The project site meets all of the following four criteria relating to biological resources:

(a) The project site does not contain wetlands;
(b) The project site does not have any value as a wildlife habitat;
(c) The project does not harm any species protected by the federal Endangered Species Act of 1973, the Native Plant Protection Act, or the California Endangered Species Act; and
(d) The project does not cause the destruction or removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete;

(5) The site is not included on any list of facilities and sites compiled pursuant to Government Code section 65962.5;

(6) The project site is subject to a preliminary endangerment assessment prepared by a registered environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity. In addition, the following steps must have been taken in response to the results of this assessment:

(a) If a release of a hazardous substance is found to exist on the site, the release shall be removed or any significant effects of the release shall be mitigated to a level of insignificance in compliance with state and federal requirements; or
(b) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance in compliance with state and federal requirements;

(7) The project does not have a significant effect on historical resources pursuant to Section 21084.1 of the Public Resources Code (see Local Guidelines Section 11.28);

(8) The project site is not subject to wildland fire hazard, as determined by the Department of Forestry and Fire Protection; unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard;

(9) The project site does not have an unusually high risk of fire or explosion from materials stored or used on nearby properties;

(10) The project site does not present a risk of a public health exposure at a level that would exceed the standards established by any state or federal agency;

(11) Either the project site is not within a delineated earthquake fault zone, or a seismic hazard zone, as determined pursuant to Section 2622 and 2696 of the Public Resources Code respectively, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake or seismic hazard;

(12) Either the project site does not present a landslide hazard, flood plain, flood way, or restriction zone, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood;

(13) The project site is not located on developed open space;

(14) The project site is not located within the boundaries of a state conservancy;

(15) The project site has not been divided into smaller projects to qualify for one or more of the exemptions for affordable housing, agricultural housing, or residential infill housing projects found in the subsequent sections; and

(16) The project meets the requirements set forth in either Public Resources Code sections 21159.22, 21159.23 or 21159.24.

(Reference: State CEQA Guidelines, § 15192.)

B. Specific Requirements for Agricultural Housing. (Public Resources Code sections 21084 and 21159.22, and State CEQA Guidelines section 15192.) CEQA does not apply to the construction, conversion, or use of residential housing for agricultural employees that meets all of the general requirements described above in Section A and meets the following additional criteria:

(1) The project either:

(a) Is affordable to lower income households, lacks public financial assistance, and the developer has provided sufficient legal commitments to ensure the continued availability and use of the housing units for lower income households for a period of at least fifteen (15) years; or

(b) If public financial assistance exists for the project, then the project must be housing for very low-, low-, or moderate-income households and the developer of the project has provided sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for low- and moderate-income households for a period of at least fifteen (15) years;

(2) The project site is adjacent on at least two sides to land that has been developed and the project consists of not more than forty-five (45) units or provides dormitories, barracks, or other group-living facilities for a total of forty-five (45) or fewer agricultural employees, and either:

(a) The project site is within incorporated city limits or within a census-defined place with a minimum population density of at least five thousand (5,000) persons per square mile; or

(b) The project site is within incorporated city limits or within a census-defined place and the minimum population density of the census-defined place is at least one thousand (1,000) persons per square mile, unless the Lead Agency determines that there is a reasonable possibility that the project, if completed, would have a significant effect on the environment due to unusual circumstances or that the cumulative effects of successive projects of the same type in the same area would, over time, be significant;

(3) If the project is located on a site zoned for general agricultural use, it must consist of twenty (20) or fewer units, or, if the housing consists of dormitories, barracks, or other group-living facilities, the project must not provide housing for more than twenty (20) agricultural employees; and

(4) The project is not more than two (2) acres in area if the project site is located in an area with a population density of at least one thousand (1,000) persons per square mile, and is not more than five (5) acres in area for all other project sites.

(Reference: Pub. Resources Code, §§ 21084, 21159.22; State CEQA Guidelines, §§ 15192, 15193.)

C. Specific Requirements for Affordable Housing Projects in Urbanized Areas. (Reference: Public Resources Code sections 21083 and 21159.23, and State CEQA Guidelines section 15194.) CEQA does not apply to any development project that consists of the construction, conversion, or use of residential housing consisting of one hundred (100) or fewer units that are affordable to low-income households if all of the general requirements described in Section A above are satisfied and the following additional criteria are also met:

(1) The developer of the project provides sufficient legal commitments to the local agency to ensure the continued availability and use of the housing units for lower income households for a period of at least thirty (30) years, at monthly housing costs deemed to be "affordable rent" for lower income, very low income, and extremely low income households, as determined pursuant to Section 50053 of the Health and Safety Code;

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(2) The project site meets one of the following conditions:

(a) Has been previously developed for qualified urban uses;
(b) Is immediately adjacent to parcels that are developed with qualified urban uses; or
(c) At least 75% of the perimeter of the site adjoins parcels that are developed with qualified urban uses and the remaining 25% of the perimeter of the site adjoins parcels that have previously been developed for qualified urban uses, the site has not been developed for urban uses and no parcel within the site has been created within ten (10) years prior to the proposed development of the site;

(3) The project site is not more than five (5) acres in area; and

(4) The project site meets one of the following requirements regarding population density:

(a) The project site is within an urbanized area or within a census-defined place with a population density of at least five thousand (5,000) persons per square mile;
(b) If the project consists of fifty (50) or fewer units, the project site is within an incorporated city with a population density of at least twenty-five hundred (2,500) persons per square mile and a total population of at least twenty-five thousand (25,000) persons; or
(c) The project site is within either an incorporated city or a census-defined place with a population density of one thousand (1,000) persons per square mile, unless there is a reasonable possibility that the project would have a significant effect on the environment due to unusual circumstances or due to the related or cumulative impacts of reasonably foreseeable projects in the vicinity of the project.

(Reference: Pub. Resources Code, §§ 21083, 21159.23; State CEQA Guidelines, § 15194.)

D. Specific Requirements for Affordable Housing Projects Near Major Transit Stops.

(a) Except as provided in subdivision (b), CEQA does not apply to a project if all of the following criteria are met:

1. The project is a residential project on an infill site.

2. The project is located within an urbanized area.

3. The project satisfies the criteria of Section 21159.21, described above in Section A.

4. Within five years of the date that the application for the project is deemed complete pursuant to Section 65943 of the Government Code, community-level environmental review was certified or adopted.

5. The site of the project is not more than four acres in total area.

6. The project does not contain more than 100 residential units.

7. Either of the following criteria (subdivision a or subdivision b) are met:

   a. (1) At least 10 percent of the housing is sold to families of moderate income, or not less than 10 percent of the housing is rented to families of low income, or not less than 5 percent of the housing is rented to families of very low income.

      (2) The project developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for very low-, low-, and moderate-income households at monthly housing costs determined pursuant to paragraph (3) of the subdivision (h) of Section 65589.5 of the Government Code.

   b. The project developer has paid or will pay in-lieu fees pursuant to a local ordinance in an amount sufficient to result in the development of an equivalent number of units that would otherwise be required pursuant to subparagraph 7.a.

8. The project is within one-half mile of a major transit stop.

9. The project does not include any single level building that exceeds 100,000 square feet.

10. The project promotes higher density infill housing. A project with a density of at least 20 units per acre shall be conclusively presumed to promote higher density infill housing. A project with a density of at least 10 units per acre and a density greater than the average density of the residential properties within 1,500 feet shall be presumed to promote higher density housing unless the preponderance of the evidence demonstrates otherwise.

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(b) Notwithstanding subdivision (a) above, the Exemption for Affordable Housing Projects near Major Transit Stops does not apply if any one of the following criteria is met:

1. There is a reasonable possibility that the project will have a project-specific, significant effect on the environment due to unusual circumstances;
2. Substantial changes have occurred since community-level environmental review was adopted or certified with respect to the circumstances under which the project is being undertaken, and those changes are related to the project; or
3. New information regarding the circumstances under which the project is being undertaken has become available, and that new information is related to the project and was not known and could not have been known at the time of the community-level environmental review.

(c) If a project satisfies the criteria described above in Section 3.12D(a), but is not exempt from CEQA as a result of satisfying the criteria described in Section 3.12D(b), the analysis of the environmental effects of the project in the EIR or the negative declaration for the project shall be limited to an analysis of the project-specific effects of the project and any effects identified pursuant to Paragraph 2 or 3 of Section 3.12D(b), above.

(Reference: Pub. Resources Code, §§ 21083, 21159.24; State CEQA Guidelines, § 15195.)

E. Whenever the Lead Agency determines that a project is exempt from environmental review based on Public Resources Code sections 21159.22 [Section 3.12B of these Local Guidelines], 21159.23 [Section 3.12C of these Local Guidelines], or 21159.24 [Section 3.12D of these Local Guidelines], Staff and/or the proponent of the project shall file a Notice of Exemption with the Office of Planning and Research within five (5) working days after the approval of the project.

(Reference: State CEQA Guidelines, § 15196.)

3.13 MINOR ALTERATIONS TO FLUORIDATE WATER UTILITIES.

Minor alterations to water utilities made for the purpose of complying with the fluoridation requirements of Health and Safety Code sections 116410 and 116415 or regulations adopted thereunder are exempt from CEQA.

(Reference: State CEQA Guidelines, § 15282(m).)

3.14 BALLOT MEASURES.

The definition of project in the State CEQA Guidelines specifically excludes the submittal of proposals to a vote of the people of the state or of a particular community. This exemption does not apply to the public agency that sponsors the initiative. When a governing body makes a

decision to put a measure on the ballot, that decision may be discretionary and therefore subject to CEQA. In contrast, the enactment of a qualified voter-sponsored initiative under California Constitution Art. II, Section 11(a) and Election Code Section 9214 is not a project and therefore is not subject to CEQA review.

(Reference: Local Guidelines Section 3.01; State CEQA Guidelines, § 15378(b)(3).)

3.15 TRANSIT PRIORITY PROJECT.

Exemption: Transit Priority Projects (see Local Guidelines Section 11.75) that are consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a Sustainable Community Strategy or an alternative planning strategy may be exempt from CEQA. To qualify for the exemption, the decision-making body must hold a hearing and make findings that the project meets all of Public Resources Code section 21155.1's environmental, housing, and public safety conditions and requirements.

Streamlined Review: A Transit Priority Project that has incorporated all feasible mitigation measures, performance standards or criteria set forth in a prior environmental impact report, may be eligible for streamlined environmental review. For a complete description of the requirements for this streamlined review see Public Resources Code section 21155.2. Similarly, the environmental review for a residential or mixed use residential project may limit, or entirely omit, its discussion of growth-inducing impacts or impacts from traffic on global warming under certain limited circumstances. Note, however, that impacts from other sources of greenhouse gas emissions would still need to be analyzed. For complete requirements see Public Resources Code section 21159.28.

Note that neither the exemption nor the streamlined review will apply until: (1) the applicable Metropolitan Planning Organization prepares and adopts a Sustainable Communities Strategy or alternative planning strategy for the region; and (2) the California Air Resources Board has accepted the Metropolitan Planning Organization's determination that the Sustainable Communities Strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets adopted for the region.

(Reference: Pub. Resources Code, §§ 21155.1, 21151.2, 21159.28.)

3.16 ROADWAY IMPROVEMENTS.

CEQA does not apply to a project or an activity to repair, maintain, or make minor alterations to an existing roadway, as defined in Local Guidelines Section 11.64, if all of the following conditions are met:

A. General Requirements:

(1) The project is carried out by a city or county with a population of less than 100,000 persons to improve public safety.

(2) The project does not cross a waterway as defined in Local Guidelines Section 11.84.

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(3) The project involves negligible or no expansion of an existing use beyond that existing at the time of the lead agency's determination.
(4) The roadway is not a state roadway.
(5) The site of the project does not contain wetlands or riparian areas, and does not have "significant value as a wildlife habitat" (as defined in Local Guidelines Section 11.66) and the project does not harm any species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), or the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), and the project does not cause the destruction or removal of any species protected by a local ordinance.
(6) The project does not impact cultural resources.
(7) The roadway does not affect scenic resources, as provided pursuant to subdivision (c) of Section 21084 of the Public Resources Code.

B. Prior to determining that a project is exempt pursuant to this section, the lead agency shall do both of the following:

(1) Include measures in the project to mitigate potential vehicular traffic and safety impacts and bicycle and pedestrian safety impacts.
(2) Hold a noticed public hearing on the project to hear and respond to public comments. The hearing on the project may be conducted with another noticed lead agency public hearing. Publication of the notice shall be no fewer times than required by Section 6061 of the Government Code, by the public agency in a newspaper of general circulation in the area.

C. Whenever the local agency determines that a project is not subject to this exemption, and it approves or determines to or carry out that project, the local agency shall file a notice with the Office of Planning and Research, and with the county clerk in the manner specified in subdivisions (b) and (c) of Public Resources Code section 21152.

3.17 CERTAIN INFILL PROJECTS

(a) (1) If an environmental impact report was certified for a planning level decision of the city or county, the application of CEQA to the approval of an infill project shall be limited to the effects on the environment that (A) are specific to the project or to the project site and were not addressed as significant effects in the prior environmental impact report or (B) substantial new information shows the effects will be more significant than described in the prior environmental impact report. The attached Form "S" shall be used for this determination. A lead agency's determination pursuant to this section shall be supported by substantial evidence.

(2) An effect of a project upon the environment shall not be considered a specific effect of the project or a significant effect that was not considered significant in a prior environmental impact report, or an effect that is more significant than was described in the prior environmental

impact report if uniformly applicable development policies or standards adopted by the city, county, or the lead agency, would apply to the project and the lead agency makes a finding, based upon substantial evidence, that the development policies or standards will substantially mitigate that effect.

(b) If an infill project would result in significant effects that are specific to the project or the project site, or if the significant effects of the infill project were not addressed in the prior environmental impact report, or are more significant than the effects addressed in the prior environmental impact report, and if a mitigated negative declaration or a sustainable communities environmental assessment could not be otherwise adopted, an environmental impact report prepared for the project analyzing those effects shall be limited as follows:

(1) Alternative locations, densities, and building intensities to the project need not be considered.

(2) Growth inducing impacts of the project need not be considered.

(c) This section applies to an infill project that satisfies both of the following:

(1) The project satisfies any of the following:

A) Is consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy for which the State Air Resources Board, pursuant to subparagraph (H) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code, has accepted a metropolitan planning organization's determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets.

(B) Consists of a small walkable community project located in an area designated by a city for that purpose.

(C) Is located within the boundaries of a metropolitan planning organization that has not yet adopted a sustainable communities strategy or alternative planning strategy, and the project has a residential density of at least 20 units per acre or a floor area ratio of at least 0.75.

(2) Satisfies all applicable statewide performance standards contained in the guidelines adopted pursuant to Public Resources Code section 21094.5.5 (Form “R”).

(d) This section applies after the Secretary of the Natural Resources Agency adopts and certifies the guidelines establishing statewide standards pursuant to Public Resources Code section 21094.5.5.

(e) For the purposes of this section, the following terms mean the following:

(1) “Infill project” means a project that meets the following conditions:

(A) Consists of any one, or combination, of the following uses:

(i) Residential.

(ii) Retail or commercial, where no more than one-half of the project area is used for parking.

(iii) A transit station.

(iv) A school.

(v) A public office building.

(B) Is located within an urban area on a site that has been previously developed, or on a vacant site where at least 75 percent of the perimeter of the site adjoins, or is separated only by an improved public right-of-way from, parcels that are developed with qualified urban uses.

(2) "Planning level decision" means the enactment or amendment of a general plan, community plan, specific plan, or zoning code.

(3) "Prior environmental impact report" means the environmental impact report certified for a planning level decision, as supplemented by any subsequent or supplemental environmental impact reports, negative declarations, or addenda to those documents.

(4) "Small walkable community project" means a project that is in an incorporated city, which is not within the boundary of a metropolitan planning organization and that satisfies the following requirements:

(A) Has a project area of approximately one-quarter mile diameter of contiguous land completely within the existing incorporated boundaries of the city.

(B) Has a project area that includes a residential area adjacent to a retail downtown area.

(C) The project has a density of at least eight dwelling units per acre or a floor area ratio for retail or commercial use of not less than 0.50.

(5) "Urban area" includes either an incorporated city or an unincorporated area that is completely surrounded by one or more incorporated cities that meets both of the following criteria:

(A) The population of the unincorporated area and the population of the surrounding incorporated cities equal a population of 100,000 or more.

(B) The population density of the unincorporated area is equal to, or greater than, the population density of the surrounding cities.

(Reference: Pub. Resources Code, § 21094.5.)

3.18 EXEMPTION FOR INFILL PROJECTS IN TRANSIT PRIORITY AREAS

A residential or mixed-use project, or a project with a floor area ratio of at least 0.75 on commercially-zoned property, including any required subdivision or zoning approvals, is exempt from CEQA if the project satisfies the following criteria:

- The project is located within a transit priority area as defined in Section 11.74 below;
- The project is consistent with an applicable specific plan for which an environmental impact report was certified; and
- The project is consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy for which the State Air Resources Board has accepted the determination that the sustainable communities strategy or the alternative planning strategy would achieve the applicable greenhouse gas emissions reduction targets.

Further environmental review shall be required for a project meeting the above criteria only if one of the events specified in Section 8.04 below occurs.

(Reference: State CEQA Guidelines, § 15182(b).)

3.19 EXEMPTION FOR RESIDENTIAL PROJECTS UNDERTAKEN PURSUANT TO A SPECIFIC PLAN

Where a public agency has prepared an EIR for a specific plan after January 1, 1980, a residential project undertaken pursuant to and in conformity with that specific plan is generally exempt from CEQA. Residential projects covered by this section include, but are not limited to, land subdivisions, zoning changes, and residential planned unit developments.

Further environmental review shall be required for a project meeting the above criteria only if, after the adoption of the specific plan, one of the events specified in Section 8.04 below occurs. In that circumstance, this exemption shall not apply until the city or county which adopted the specific plan completes a subsequent EIR or a supplement to an EIR on the specific plan. The exemption provided by this section shall again be available to residential projects after the Lead Agency has filed a Notice of Determination on the specific plan as reconsidered by the subsequent EIR or supplement to the EIR.

(Reference: State CEQA Guidelines, § 15182(c).)

3.20 TRANSIT PRIORITIZATION PROJECTS.

CEQA exempts the following projects when (i) the project is carried out by a local agency that is the lead agency for the project; (ii) the project does not induce single-occupancy vehicle trips, add additional highway lanes, widen highways, or add physical infrastructure or striping to highways except for minor modifications needed for efficient and safe movement of transit vehicles, bicycles, or high-occupancy vehicles, such as extended merging lanes, shoulder

improvements, or improvements to the roadway within the existing right of way; (iii) the project does not include the addition of any auxiliary lanes; and (iv) the construction of the project shall not require the demolition of affordable housing units:

(1) Pedestrian and bicycle facilities—including bicycle parking, bicycle sharing facilities, and bikeways as defined in Section 890.4 of the Streets and Highways Code—that improve safety, access, or mobility, including new facilities, within the public right-of-way;

(2) Projects that improve customer information and wayfinding for transit riders, bicyclists, or pedestrians within the public right-of-way;

(3) Transit prioritization projects, which are defined to mean any of the following transit project types on highways or in the public right-of-way:

(a) Signal and sign changes, such as signal coordination, signal timing modifications, signal modifications, or the installation of traffic signs or new signals;

(b) The installation of wayside technology and onboard technology;

(c) The installation of ramp meters;

(d) The conversion to dedicated transit lanes, including transit queue jump or bypass lanes, shared turning lanes and turn restrictions, the narrowing of lanes to allow for dedicated transit lanes or transit reliability improvements, or the widening of existing transit travel lanes by removing or restricting street parking; and

(e) Transit stop access and safety improvements, including, but not limited to, the installation of transit bulbs and the installation of transit boarding islands.

(4) A project for the designation and conversion of general purpose lanes to high-occupancy vehicle lanes or bus-only lanes, or highway shoulders to part-time transit lanes, for use either during peak congestion hours or all day on highways with existing public transit service or where a public transit agency will be implementing public transit service as identified in a short range transit plan.

(5) A project for the institution or increase of bus rapid transit, bus, or light rail service, including the construction or rehabilitation of stations, terminals, or existing operations facilities, which will be exclusively used by zero-emission, near-zero emission, low oxide of nitrogen engine, compressed natural gas fuel, fuel cell, or hybrid powertrain buses or light rail vehicles, on existing public rights-of-way or existing highway rights-of-way, whether or not the right-of-way is in use for public mass transit. The project shall be located on a site that is wholly within the boundaries of an urbanized area or urban cluster, as designated by the United State Census Bureau.

(6) A project to construct or maintain infrastructure to charge or refuel zero-emission transit buses, provided the project is carried out by a public transit agency that is subject to, and in compliance with, the State Air Resources Board's Innovative Clean Transit regulations (Article 4.3 (commencing with Section 2023) of Chapter 1 of Division 3 of Title 13 of the California Code of Regulations) and the project is located on property owned by the transit agency or within an existing public right-of-way.

A lead agency applying an exemption pursuant to this paragraph for hydrogen refueling infrastructure or facilities necessary to refuel or maintain zero-emission public transit buses, trains, or ferries shall hold a noticed public hearing and give notice of the meeting consistent with Public Resources Code section 21080.25(b)(6)(B).

(7) The maintenance, repair, relocation, replacement, or removal of any utility infrastructure associated with a project identified in paragraphs (1) to (6), inclusive.

(8) A project that consists exclusively of a combination of any of the components of a project identified in paragraphs (1) to (7), inclusive.

(9) A planning decision carried out by a local agency to reduce or eliminate minimum parking requirements or institute parking maximums, remove or restrict parking, or implement transportation demand management requirements or programs.

Additional conditions apply to a project otherwise exempt under this section if the project exceeds fifty million dollars ($50,000,000), as set forth in Public Resources Code section 21080.25(d)-(e).

Moreover, a project exempt under this section may be subject to certain labor requirements, including that the project be completed by a skilled and trained workforce, as set forth in Public Resources Code section 21080.25(f).

If the District determines that a project is not subject to CEQA pursuant to this section and approves that project, the District must file a Notice of Exemption with both the Office of Planning and Research and the County Clerk of the county in which the project is located.

This exemption shall remain in effect only until January 1, 2030, and as of that date it will be repealed. (Reference: Pub. Resources Code, § 21080.25.)

3.21 TRANSPORTATION PLANS, PEDESTRIAN PLANS, AND BICYCLE TRANSPORTATION PLANS.

CEQA does not apply to an active transportation plan, a pedestrian plan, or a bicycle transportation plan for restriping of streets and highways, bicycle parking and storage, signal timing to improve street and highway intersection operations, and the related signage for bicycles,

pedestrians, and vehicles. An active transportation plan or pedestrian plan is encouraged to include the consideration of environmental factors, but that consideration does not inhibit or preclude the application of this section.

An individual project that is part of an active transportation plan or pedestrian plan remains subject to CEQA unless another exemption applies to that project.

Before determining that a project is exempt pursuant to this section, the Lead Agency must hold noticed public hearings in areas affected by the project to hear and respond to public comments. Publication of the notice must comply with Government Code section 6061 and be in a newspaper of general circulation in the area affected by the proposed project.

If the District determines that a project is not subject to CEQA pursuant to this section and approves that project, the District must file a Notice of Exemption with both the Office of Planning and Research and the County Clerk of the county in which the project is located.

For purposes of this section, the following definitions apply:

(1) "Active transportation plan" means a plan developed by a local jurisdiction that promotes and encourages people to choose walking, bicycling, or rolling through the creation of safe, comfortable, connected, and accessible walking, bicycling, or rolling networks, and encourages alternatives to single-occupancy vehicle trips.

(2) "Pedestrian plan" means a plan developed by a local jurisdiction that establishes a comprehensive, coordinated approach to improving pedestrian infrastructure and safety.

This exemption shall remain in effect only until January 1, 2030, and as of that date it will be repealed. (Reference: Pub. Resources Code, § 21080.20.)

3.22 WATER SYSTEM WELLS AND DOMESTIC WELL PROJECTS.

CEQA does not apply to the construction, maintenance, repair, or replacement of a well or a domestic well that meets all of the following conditions:

(1) The domestic well or water system to which the well is connected has been designated by the State Water Resources Control Board ("State Board") as high risk or medium risk in the State Board's drinking water needs assessment;

(2) The well project is designed to mitigate or prevent a failure of the well or the domestic well that would leave residents that rely on the well, the water system to which the well is connected, or the domestic well without an adequate supply of safe drinking water;

(3) The lead agency determines all of the following:

(a) The well project is not designed primarily to serve irrigation or future growth.

(b) The well project does not affect wetlands or sensitive habitats.

(c) Unusual circumstances do not exist that would cause the well project to have a significant effect on the environment.

(d) The well project is not located on a site that is included on any list compiled pursuant to Section 65962.5 of the Government Code.

(e) The well project does not have the potential to cause a substantial adverse change in the significance of a historical resource.

(f) The well project's construction impacts are fully mitigated consistent with applicable law.

(g) The cumulative impact of successive reasonably anticipated projects of the same type as the well project, in the same place, over time, is not significant.

Before determining that a well project is exempt pursuant to this section, a lead agency must contact the State Board to determine whether claiming the exemption under this section will affect the ability of the well project to receive federal financial assistance or federally capitalized financial assistance.

A lead agency that determines that a well project is exempt under this section must file a notice of exemption with both OPR and the County Clerk. The notice of exemption must explain whether the project is additionally exempt from CEQA under Public Resources Code section 21080 (e.g., whether it is a ministerial project, an emergency repair necessary to maintain service, or an action necessary to prevent or mitigate an emergency), Public Resources Code section 21080.47 (see Section 3.23 of these Local Guidelines, below), or under the Class 1 (Existing Facilities) or Class 2 (Replacement or Reconstruction) categorical exemptions (see Section 3.28 of these Local Guidelines, below). If none of the exemptions referenced in this paragraph apply to a project that is otherwise exempt under this section, the notice of exemption must explain why the exemptions referenced in this paragraph do not apply to the project.

For purposes of this section, the following definitions apply:

A "well" is defined as a wellhead that provides drinking water to a "water system."

A "domestic well" is defined as a groundwater well used to supply water for the domestic needs of an individual residence or a water system that is not a public water system and that has no more than four service connections.

A "water system" is defined to mean a "public water system" as that term is defined in Health and Safety Code section 116275(h) (i.e., a system for the provision of water for human consumption through pipes or other constructed conveyances that has 15 or more service connections or regularly serves at least 25 individuals daily at least 60 days out of the year), a

"state small water system" as that term is defined in Health and Safety Code section 116275(n) (i.e., a system for the provision of piped water to the public for human consumption that serves at least five, but not more than 14, service connections and does not regularly serve drinking water to more than an average of 25 individuals daily for more than 60 days out of the year), or a tribal water system.

(Pub. Resources Code, § 21080.31 [in effect until January 1, 2028].)

3.23 SMALL DISADVANTAGED COMMUNITY WATER SYSTEM AND STATE SMALL WATER SYSTEM.

CEQA does not apply to certain water infrastructure projects that primarily benefit a "small disadvantaged community water system" or a "state small water system," as these terms are defined in Public Resources Code section 21080.47. If certain labor requirements and other conditions are met as set forth in Public Resources Code section 21080.47, the installation, repair, or construction of the following for the benefit of a small disadvantaged community water system or state small water system is exempt from CEQA:

(1) Drinking water groundwater wells with a maximum flow rate of up to 250 gallons per minute;

(2) Drinking water treatment facilities with a footprint of less than 2,500 square feet that are not located in an environmentally sensitive area;

(3) Drinking water storage tanks with a capacity of up to 250,000 gallons;

(4) Booster pumps and hydropneumatic tanks;

(5) Pipelines of less than one mile in length in a road right-of-way or up to seven miles in length in a road right-of-way when the project is required to address threatened or current drinking water violations;

(6) Water services lines; and

(7) Minor drinking water system appurtenances, including, but not limited to, system and service meters, fire hydrants, water quality sampling stations, valves, air releases and vacuum break valves, emergency generators, backflow prevention devices, and appurtenance enclosures.

(Reference: Pub. Resources Code, § 21080.47.)

3.24 CONSERVATION AND RESTORATION OF CALIFORNIA NATIVE FISH AND WILDLIFE.

(a) CEQA does not apply to a project that is exclusively one of the following (though a project may exclusively be one of the following even if it has incidental public benefits, such as public access or recreation) and meets the criteria set forth in subdivision (b) of this section:

(1) A project to conserve, restore, protect, or enhance, and assist in the recovery of California native fish and wildlife, and the habitat upon which they depend.

(2) A project to restore or provide habitat for California native fish and wildlife.

(b) This section does not apply to a project unless the project does both of the following:

(1) Results in long-term net benefits to climate resiliency, biodiversity, and sensitive species recovery; and

(2) Includes procedures and ongoing management for the protection of the environment.

(c) This section does not apply to a project that includes construction activities, except for construction activities solely related to habitat restoration.

(d) The lead agency shall obtain the concurrence of the Director of Fish and Wildlife for the determinations required pursuant to subdivisions (a) through (c) above.

(e) Within 48 hours of making a determination that a project is exempt pursuant to this section, the lead agency shall file a Notice of Exemption with the Office of Planning and Research, and the Department of Fish and Wildlife must post the concurrence of the Director of Fish and Wildlife on the department's website.

This exemption is in effect until January 1, 2025. (Pub. Resources Code, § 21080.56.)

3.25 LINEAR BROADBAND DEPLOYMENT IN A RIGHT-OF-WAY.

(a) CEQA does not apply to a project that consists of linear broadband deployment in a right-of-way if the project meets all of the following conditions:

(1) The project is located in an area identified by the Public Utilities Commission as a component of the statewide open-access middle-mile broadband network pursuant to Section 11549.54 of the Government Code.

(2) The project is constructed along, or within 30 feet of, the right-of-way of any public road or highway.

(3) The project is either deployed underground where the surface area is restored to a condition existing before the project or placed aerially along an existing utility pole right-of-way.

(4) The project incorporates, as a condition of project approval, measures developed by the Public Utilities Commission or the Department of Transportation to address potential environmental impacts. At a minimum,

the project shall be required to include monitors during construction activities and measures to avoid or address impacts to cultural and biological resources.

(5) The project applicant agrees to comply with all conditions otherwise authorized by law, imposed by the planning department of a city or county as part of a local agency permit process, that are required to mitigate potential impacts of the proposed project, and to comply with the Keene-Nejedly California Wetlands Preservation Act (Chapter 7 (commencing with Section 5810) of Division 5), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), as applicable, other applicable state laws, and all applicable federal laws.

(b) If a project meets all of the requirements of subdivision (a), the project applicant shall do all of the following:

(1) Notify, in writing, any affected public agency, including, but not limited to, any public agency having permit, land use, environmental, public health protection, or emergency response authority, of the exemption of the project pursuant to this section.

(2) File a Notice of Exemption.

(3) In the case of private rights-of-way over private property, receive from the underlying property owner permission for access to the property.

(4) Comply with all conditions authorized by law imposed by the planning department of a city or county as part of any local agency permit process, that are required to mitigate potential impacts of the proposed project, and otherwise comply with the Keene-Nejedly California Wetlands Preservation Act (Chapter 7 (commencing with Section 5810) of Division 5), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), as applicable, other applicable state laws, and all applicable federal laws.

(Reference: Pub. Resources Code, § 21080.51.)

3.26 NEEDLE AND SYRINGE EXCHANGE SERVICES.

The Legislature has authorized cities and counties meeting certain requirements to apply to the State Department of Public Health for authorization to provide hypodermic needle and syringe exchange services consistent with state standards in any location where the State Department of Public Health determines that the conditions exist for the rapid spread of human immunodeficiency virus (HIV), viral hepatitis, or any other potentially deadly or disabling infections that are spread through the sharing of used hypodermic needles and syringes. (Health and Safety Code, § 121349.) Needle and syringe exchange services application submissions,

authorizations, and operations performed pursuant to Health and Safety Code section 121349 are exempt from review under CEQA. (Health and Safety Code, § 121349(h).)

3.27 OTHER SPECIFIC EXEMPTIONS.

CEQA and the State CEQA Guidelines exempt many other specific activities, including early activities related to thermal power plants, ongoing projects, transportation improvement programs, family day care homes, congestion management programs, railroad grade separation projects, restriping of streets or highways to relieve traffic congestion, hazardous or volatile liquid pipelines, and the installation of solar energy systems, including, but not limited to solar panels. Specific statutory exemptions are listed in the Public Resources Code, including Sections 21080 through 21080.35, and in the State CEQA Guidelines, including Sections 15260 through 15285. In addition, other titles of the California Codes provide statutory exemptions from CEQA, including, for example, Government Code section 12012.70.

3.28 CATEGORICAL EXEMPTIONS.

The State CEQA Guidelines establish certain classes of categorical exemptions. These apply to classes of projects which have been determined not to have a significant effect on the environment and which, therefore, are generally exempt from CEQA. For any project that falls within one of these classes of categorical exemptions, the preparation of environmental documents under CEQA is not required. The classes of projects are briefly summarized below. (Reference to the State CEQA Guidelines for the full description of each exemption is recommended.)

The exemptions for Classes 3, 4, 5, 6 and 11 below are qualified in that such projects must be considered in light of the location of the project. A project that is ordinarily insignificant in its impact on the environment may, in a particularly sensitive environment, be significant. Therefore, these classes are considered to apply in all instances except when the project may impact an environmental resource of hazardous or critical concern that has been designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

All classes of categorical exemptions are qualified. None of the categorical exemptions are applicable if any of the following circumstances exist:

(1) The cumulative impact of successive projects of the same type in the same place over time is significant;

(2) There is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances;

(3) The project may result in damage to a scenic resource or may result in a substantial adverse change to a historical resource; or

(4) The project is located on a site which is included on any hazardous waste site or list compiled pursuant to Government Code section 65962.5.

However, a project's greenhouse gas emissions do not, in and of themselves, cause an exemption to be inapplicable if the project otherwise complies with all applicable regulations or

requirements adopted to implement statewide, regional, or local plans consistent with State CEQA Guidelines section 15183.5.

With the foregoing limitations in mind, the following classes of activity are generally exempt from CEQA:

Class 1: Existing Facilities. Activities involving the operation, repair, maintenance, permitting, leasing, licensing, minor alteration of—or legislative activities to regulate— existing public or private structures, facilities, mechanical equipment or other property, or topographical features, provided the activity involves negligible or no expansion of existing or former use. The types of "existing facilities" itemized in State CEQA Guidelines section 15301 are not intended to be all-inclusive of the types of projects which might fall within the Class 1 categorical exemption. The key consideration is whether the project involves negligible or no expansion of use. (State CEQA Guidelines section 15301.)

Class 2: Replacement or Reconstruction. Replacement or reconstruction of existing facilities, structures, or other property where the new facility or structure will be located on the same site as the replaced or reconstructed facility or structure and will have substantially the same purpose and capacity as the replaced or reconstructed facility or structure. (State CEQA Guidelines section 15302.)

Class 3: New Construction or Conversion of Small Structures. Construction of limited numbers of small new facilities or structures; installation of small new equipment or facilities in small structures; and the conversion of existing small structures from one use to another, when only minor modifications are made in the exterior of the structure. This exemption includes structures built for both residential and commercial uses. (The maximum number of structures allowable under this exemption is set forth in State CEQA Guidelines section 15303.)

Class 4: Minor Alterations to Land. Minor alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees, except for forestry or agricultural purposes. (State CEQA Guidelines section 15304.)

Class 5: Minor Alterations in Land Use Limitations. Minor alterations in land use limitations in areas with an average slope of less than 20% which do not result in any changes in land use or density. (State CEQA Guidelines section 15305.)

Class 6: Information Collection. Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. (State CEQA Guidelines section 15306.)

Class 7: Actions by Regulatory Agencies for Protection of Natural Resources. Actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment. (State CEQA Guidelines section 15307.)

Class 8: Actions By Regulatory Agencies for Protection of the Environment. Actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance,

restoration, enhancement or protection of the environment where the regulatory process involves procedures for protection of the environment. (State CEQA Guidelines section 15308.)

Class 9: Inspection. Inspection activities, including, but not limited to, inquiries into the performance of an operation and examinations of the quality, health or safety of a project. (State CEQA Guidelines section 15309.)

Class 10: Loans. Loans made by the Department of Veterans Affairs under the Veterans Farm and Home Purchase Act of 1943, mortgages for the purchase of existing structures where the loan will not be used for new construction and the purchase of such mortgages by financial institutions. (State CEQA Guidelines section 15310.)

Class 11: Accessory Structures. Construction or replacement of minor structures accessory or appurtenant to existing commercial, industrial, or institutional facilities, including, but not limited to, on-premise signs; small parking lots; and placement of seasonal or temporary use items, such as lifeguard towers, mobile food units, portable restrooms or similar items in generally the same locations from time to time in publicly owned parks, stadiums or other facilities designed for public use. (State CEQA Guidelines section 15311.)

Class 12: Surplus Government Property Sales. Sales of surplus government property, except for certain parcels of land located in an area of statewide, regional or area-wide concern identified in State CEQA Guidelines section 15206(b)(4). However, even if the surplus property to be sold is located in any of those areas, its sale is exempt if:

(a) The property does not have significant values for wildlife or other environmental purposes; and
(b) Any one of the following three conditions is met:
    1. The property is of such size, shape, or inaccessibility that it is incapable of independent development or use;
    2. The property to be sold would qualify for an exemption under any other class of categorical exemption in the State CEQA Guidelines; or
    3. The use of the property and adjacent property has not changed since the time of purchase by the public agency.

(State CEQA Guidelines section 15312.)

Class 13: Acquisition of Lands for Wildlife Conservation Purposes. Acquisition of lands for fish and wildlife conservation purposes, including preservation of fish and wildlife habitat, establishment of ecological preserves under Fish and Game Code section 1580, and preservation of access to public lands and waters where the purpose of the acquisition is to preserve the land in its natural condition. (State CEQA Guidelines section 15313.)

Class 14: Minor Additions to Schools. Minor additions to existing schools within existing school grounds where the addition does not increase original student capacity by more than 25% or ten (10) classrooms, whichever is less. The addition of portable classrooms is included in this exemption. (State CEQA Guidelines section 15314.)

Class 15: Minor Land Divisions. Division(s) of property in urbanized areas zoned for residential, commercial or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous two (2) years, and the parcel does not have an average slope greater than 20%. (State CEQA Guidelines section 15315.)

Class 16: Transfer of Ownership of Land in Order to Create Parks. Acquisition, sale, or other transfer of land in order to establish a park where the land is in a natural condition or contains historical or archaeological resources and either:

(a) The management plan for the park has not been prepared, or
(b) The management plan proposes to keep the area in a natural condition or preserve the historic or archaeological resources.

CEQA will apply when a management plan is proposed that will change the area from its natural condition or cause substantial adverse change in the significance of the historic or archaeological resource. (State CEQA Guidelines section 15316.)

Class 17: Open Space Contracts or Easements. Establishment of agricultural preserves, making and renewing of open space contracts under the Williamson Act, or acceptance of easements or fee interests in order to maintain the open space character of the area. (The cancellation of such preserves, contracts, interests or easements is not included in this exemption.) (State CEQA Guidelines section 15317.)

Class 18: Designation of Wilderness Areas. Designation of wilderness areas under the California Wilderness System. (State CEQA Guidelines section 15318.)

Class 19: Annexations of Existing Facilities and Lots for Exempt Facilities. This exemption applies only to the following annexations:

(a) Annexations to a city or special district of areas containing existing public or private structures developed to the density allowed by the current zoning or prezoning of either the gaining or losing governmental agency, whichever is more restrictive; provided, however, that the extension of utility services to the existing facilities would have a capacity to serve only the existing facilities; and
(b) Annexations of individual small parcels of the minimum size for facilities exempted by Class 3, New Construction or Conversion of Small Structures.

(State CEQA Guidelines section 15319.)

Class 20: Changes in Organization of Local Agencies. Changes in the organization of local governmental agencies where the changes do not change the geographical area in which previously existing powers are exercised. Examples include but are not limited to:

(a) Establishment of a subsidiary district;
(b) Consolidation of two or more districts having identical powers; and
(c) Merger with a city of a district lying entirely within the boundaries of the city.

(State CEQA Guidelines section 15320.)

Class 21: Enforcement Actions by Regulatory Agencies. Actions by regulatory agencies to enforce or revoke a lease, permit, license, certificate or other entitlement for use issued, adopted or prescribed by the regulatory agency or enforcement of a law, general rule, standard or objective administered or adopted by the regulatory agency; or law enforcement activities by peace officers acting under any law that provides a criminal sanction. The direct referral of a violation of lease, permit, license, certificate, or entitlement to the City Attorney for judicial enforcement is exempt under this Class. (Construction activities undertaken by the public agency taking the enforcement or revocation action are not included in this exemption.) (State CEQA Guidelines section 15321.)

Class 22: Educational or Training Programs Involving No Physical Changes. The adoption, alteration or termination of educational or training programs which involve no physical alteration in the area affected or which involve physical changes only in the interior of existing school or training structures. Examples include but are not limited to:

(a) Development of or changes in curriculum or training methods; or
(b) Changes in the trade structure in a school which do not result in changes in student transportation.

(State CEQA Guidelines section 15322.)

Class 23: Normal Operations of Facilities for Public Gatherings. Continued or repeated normal operations of existing facilities for public gatherings for which the facilities were designed, where there is past history, of at least three years, of the facility being used for the same or similar purposes. Facilities included within this exemption include, but are not limited to, race tracks, stadiums, convention centers, auditoriums, amphitheaters, planetariums, swimming pools and amusement parks. (State CEQA Guidelines section 15323.)

Class 24: Regulation of Working Conditions. Actions taken by the City to regulate employee wages, hours of work or working conditions where there will be no demonstrable physical changes outside the place of work. (State CEQA Guidelines section 15324.)

Class 25: Transfers of Ownership of Interest in Land to Preserve Existing Natural Conditions and Historical Resources. Transfers of ownership of interest in land in order to preserve open space, habitat, or historical resources. Examples include, but are not limited to, acquisition, sale, or other transfer of areas to: preserve existing natural conditions, including plant or animal habitats; allow continued agricultural use of the areas; allow restoration of natural conditions; preserve open space or lands for natural park purposes; or prevent encroachment of development into floodplains. This exemption does not apply to the development of parks or park uses. (State CEQA Guidelines section 15325.)

Class 26: Acquisition of Housing for Housing Assistance Programs. Actions by a redevelopment agency, housing authority or other public agency to implement an adopted Housing Assistance Plan by acquiring an interest in housing units, provided the housing units are either in existence or possessing all required permits for construction when the agency makes its final decision to acquire the units. (State CEQA Guidelines section 15326.)

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Class 27: Leasing New Facilities. Leasing of a newly constructed or previously unoccupied privately owned facility by a local or state agency when the City determines that the proposed use of the facility:

(a) Conforms with existing state plans and policies and with general, community, and specific plans for which an EIR or Negative Declaration has been prepared;
(b) Is substantially the same as that originally proposed at the time the building permit was issued;
(c) Does not result in a traffic increase of greater than 10% of front access road capacity; and
(d) Includes the provision of adequate employee and visitor parking facilities.

(State CEQA Guidelines section 15327.)

Class 28: Small Hydroelectric Projects as Existing Facilities. Installation of certain small hydroelectric-generating facilities in connection with existing dams, canals and pipelines, subject to the conditions in State CEQA Guidelines section 15328. (State CEQA Guidelines section 15328.)

Class 29: Cogeneration Projects at Existing Facilities. Installation of cogeneration equipment with a capacity of 50 megawatts or less at existing facilities meeting certain conditions listed in State CEQA Guidelines section 15329. (State CEQA Guidelines section 15329.)

Class 30: Minor Actions to Prevent, Minimize, Stabilize, Mitigate or Eliminate the Release or Threat of Release of Hazardous Waste or Hazardous Substances. Any minor cleanup actions taken to prevent, minimize, stabilize, mitigate, or eliminate the release or threat of release of a hazardous waste or substance which are small or medium removal actions costing $1 million or less. (State CEQA Guidelines section 15330.)

(a) No cleanup action shall be subject to this Class 30 exemption if the action requires the onsite use of a hazardous waste incinerator or thermal treatment unit or the relocation of residences or businesses, or the action involves the potential release into the air of volatile organic compounds as defined in Health and Safety Code section 25123.6, except for small scale in situ soil vapor extraction and treatment systems which have been permitted by the local Air Pollution Control District or Air Quality Management District. All actions must be consistent with applicable state and local environmental permitting requirements including, but not limited to, off-site disposal, air quality rules such as those governing volatile organic compounds and water quality standards, and approved by the regulatory body with jurisdiction over the site;
(b) Examples of such minor cleanup actions include but are not limited to:
    1. Removal of sealed, non-leaking drums of hazardous waste or substances that have been stabilized, containerized and are designated for a lawfully permitted destination;
    2. Maintenance or stabilization of berms, dikes, or surface impoundments;
    3. Construction or maintenance or interim of temporary surface caps;

4. Onsite treatment of contaminated soils or sludge provided treatment system meets Title 22 requirements and local air district requirements;
5. Excavation and/or offsite disposal of contaminated soils or sludge in regulated units;
6. Application of dust suppressants or dust binders to surface soils;
7. Controls for surface water run-on and run-off that meets seismic safety standards;
8. Pumping of leaking ponds into an enclosed container;
9. Construction of interim or emergency ground water treatment systems; or
10. Posting of warning signs and fencing for a hazardous waste or substance site that meets legal requirements for protection of wildlife.

Class 31: Historical Resource Restoration/Rehabilitation. Maintenance, repairs, stabilization, rehabilitation, restoration, preservation, conservation, or reconstruction of historical resources in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (1995), Weeks and Grimmer. (State CEQA Guidelines section 15331.)

Class 32: Infill Development Projects. Infill development meeting the following conditions:

(a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations;
(b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses;
(c) The project site has no value as habitat for endangered, rare or threatened species;
(d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and
(e) The site can be adequately served by all required utilities and public services.

(State CEQA Guidelines section 15332.)

Class 33: Small Habitat Restoration Projects.

This exemption applies to projects to assure the maintenance, restoration, enhancement, or protection of habitat for fish, plants, or wildlife, provided that such projects meet the following criteria:

(a) The project does not exceed five acres in size;

(b) There would be no significant adverse impact on endangered, rare or threatened species or their habitat pursuant to Section 15065 of the State CEQA Guidelines;

(a) There are no hazardous materials at or around the project site that may be disturbed or removed; and

(b) The project will not result in impacts that are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

Examples of small habitat restoration projects include, but are not limited to: revegetation of disturbed areas with native plant species; wetland restoration, the primary purpose of which is to improve conditions for waterfowl or other species that rely on wetland habitat; stream or river bank revegetation, the primary purpose of which is to improve habitat for amphibians or native fish; projects to restore or enhance habitat that are carried out principally with hand labor and not mechanized equipment; stream or river bank stabilization with native vegetation or other bioengineering techniques, the primary purpose of which is to reduce or eliminate erosion and sedimentation; and culvert replacement conducted in accordance with published guidelines of DFW or NOAA Fisheries, the primary purpose of which is to improve habitat or reduce sedimentation.

(State CEQA Guidelines section 15333.)

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4. TIME LIMITATIONS

4.01 REVIEW OF PRIVATE PROJECT APPLICATIONS.

Staff shall determine whether the application for a private project is complete within thirty (30) days of receipt of the application. No application may be deemed incomplete based on an applicant's refusal to waive the time limitations set forth in Local Guidelines Sections 4.03 and 4.04.

Accepting an application as complete does not limit the authority of the City, acting as Lead Agency or Responsible Agency, to require the applicant to submit additional information needed for environmental evaluation of the project. Requiring such additional information after the application is complete does not change the status of the application.

(Reference: State CEQA Guidelines, § 15101.)

4.02 DETERMINATION OF TYPE OF ENVIRONMENTAL DOCUMENT.

Except as provided in Local Guidelines Sections 4.05 and 4.06, Staff's initial determination as to whether a Negative Declaration, Mitigated Negative Declaration or an EIR should be prepared shall be made within thirty (30) days from the date on which an application for a project is accepted as complete by the City. This period may be extended fifteen (15) days with consent of the applicant and the City.

(Reference: State CEQA Guidelines, § 15102.)

4.03 COMPLETION AND ADOPTION OF NEGATIVE DECLARATION.

For private projects involving the issuance of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies, the Negative Declaration/Mitigated Negative Declaration shall be completed and approved within one hundred eighty (180) days from the date when the City accepted the application as complete. In the event that compelling circumstances justify additional time and the project applicant and Lead Agency consent thereto, Staff may provide that the 180-day time limit may be extended once for a period of not more than 90 days.

(Reference: State CEQA Guidelines, § 15107.)

4.04 COMPLETION AND CERTIFICATION OF FINAL EIR.

For private projects, the Final EIR shall be completed and certified by the City within one (1) year after the date the City accepted the application as complete. In the event that compelling circumstances justify additional time and the project applicant consents thereto, the City may provide a one-time extension up to ninety (90) days for completing and certifying the EIR.

(Reference: State CEQA Guidelines, § 15108.)

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4.05 PROJECTS SUBJECT TO THE PERMIT STREAMLINING ACT.

The Permit Streamlining Act requires agencies to make decisions on certain development project approvals within specified time limits. If a project is subject to the Permit Streamlining Act, the City cannot require the project applicant to submit the informational equivalent of an EIR or prove compliance with CEQA as a prerequisite to determining whether the project application is complete. In addition, if requested by the project applicant, the City must begin processing the project application prior to final CEQA action, provided the information necessary to begin the process is available.

(Reference: Gov. Code §§ 65941, 65944.)

Under the Permit Streamlining Act, the Lead Agency must approve or disapprove the development project application within one hundred eighty (180) days from the date on which it certifies the EIR, or within ninety (90) days of certification if an extension for completing and certifying the EIR was granted. If the Lead Agency adopts a Negative Declaration/Mitigated Negative Declaration or determines the development project is exempt from CEQA, it shall approve or disapprove the project application within sixty (60) days from the date on which it adopts the Negative Declaration/Mitigated Negative Declaration or determines that the project is exempt from CEQA.

(Reference: Gov. Code §§ 65950, 65950.1; see also State CEQA Guidelines, § 15107.)

Except for waivers of the time periods for preparing a joint Environmental Impact Report/Environmental Impact Statement (as outlined in Government Code sections 65951 and 65957), the City cannot require a waiver of the time limits specified in the Permit Streamlining Act as a condition of accepting or processing a development project application. In addition, the City cannot disapprove a development project application in order to comply with the time limits specified in the Permit Streamlining Act.

(Reference: Gov. Code §§ 65940.5, 65952.2.)

4.06 PROJECTS, OTHER THAN THOSE SUBJECT TO THE PERMIT STREAMLINING ACT, WITH SHORT TIME PERIODS FOR APPROVAL.

A few statutes require agencies to make decisions on project applications within time limits that are so short that review of the project under CEQA would be difficult. To enable the City as Lead Agency to comply with both the enabling statute and CEQA, the City shall deem a project application as not received for filing under the enabling statute until such time as the environmental documentation required by CEQA is complete. This section applies where all of the following conditions are met:

(a) The enabling statute for a program, other than development projects under Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code, requires the City to take action on an application within a specified period of time of six (6) months or less;
(b) The enabling statute provides that the project is approved by operation of law if the City fails to take any action within the specified time period; and

(c) The project application involves the City's issuance of a lease, permit, license, certificate or other entitlement for use.

In any case, the environmental document shall be completed or certified and the decision on the application shall be made within the period established by the Permit Streamlining Act (Government Code sections 65920, et seq.).

(Reference: State CEQA Guidelines, § 15111.)

4.07 WAIVER OR SUSPENSION OF TIME PERIODS.

These deadlines may be waived by the applicant if the project is subject to both CEQA and the National Environmental Policy Act ("NEPA"). (State CEQA Guidelines sections 15110 and 15224; see Section 5.04 of these Local Guidelines for information about projects that are subject to both CEQA and NEPA.)

An unreasonable delay by an applicant in meeting the City's requests necessary for the preparation of a Negative Declaration, Mitigated Negative Declaration, or an EIR shall suspend the running of the time periods described in Local Guidelines Sections 4.03 and 4.04 for the period of the unreasonable delay. Alternatively, the City may disapprove a project application where there is unreasonable delay in meeting requests. The City may also allow a renewed application to start at the same point in the process where the prior application was when it was disapproved.

(Reference: State CEQA Guidelines, §§ 15109, 15110, and 15224; see Section 5.04 of these Local Guidelines for information about projects that are subject to both CEQA and NEPA.)

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5. INITIAL STUDY

5.01 PREPARATION OF INITIAL STUDY.

If the City determines that it is the Lead Agency for a project which is not exempt, the City will normally prepare an Initial Study to ascertain whether the project may have a substantial adverse effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial. All phases of project planning, implementation and operation must be considered in the Initial Study. An Initial Study may rely on expert opinion supported by facts, technical studies or other substantial evidence. However, an Initial Study is neither intended nor required to include the level of detail included in an EIR.

The City, as Lead Agency, may use any of the following arrangements or combination of arrangements to prepare an Initial Study:

(1) Preparing the Initial Study directly with the City's own staff.

(2) Contracting with another entity, public or private, to prepare the Initial Study.

(3) Accepting a draft Initial Study prepared by the applicant, a consultant retained by the applicant, or any other third person.

(4) Executing a third party contract or memorandum of understanding with the applicant to govern the preparation of an Initial Study by an independent contractor.

(5) Using a previously prepared Initial Study.

The Initial Study sent out for public review, however, must reflect the independent judgment of the Lead Agency.

For private projects, the person or entity proposing to carry out the project shall submit all data and information as may be required by the City to determine whether the proposed project may have a significant effect on the environment. All costs incurred by the City in reviewing the data and information submitted, or in conducting its own investigation based upon such data and information, or in preparing an Initial Study for the project shall be borne by the person or entity proposing to carry out the project.

(Reference: State CEQA Guidelines, §§ 15063, 15084.)

5.02 INFORMAL CONSULTATION WITH OTHER AGENCIES.

When more than one public agency will be involved in undertaking or approving a project, the Lead Agency shall consult with all Responsible and any Trustee Agencies. Such consultation shall be undertaken in compliance with the notice procedures applicable to the type of CEQA document being prepared. See Section 6.04, Negative Declarations, and Sections 7.03 and 7.25, EIRs.

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When the City is acting as Lead Agency, the City may choose to engage in early consultation with Responsible and Trustee Agencies before the City begins to prepare the Initial Study. This early consultation may be done quickly and informally and is intended to ensure that the EIR, Negative Declaration or Mitigated Negative Declaration reflects the concerns of all Responsible Agencies that will issue approvals for the project and all Trustee Agencies responsible for natural resources affected by the project. The City's early consultation process may include consultation with other individuals or organizations with an interest in the project, if the City so desires. The OPR, upon request of the City or a private project applicant, shall assist in identifying the various Responsible Agencies for a proposed project and ensure that the Responsible Agencies are notified regarding any early consultation. In the case of a project undertaken by a public agency, the OPR, upon request of the City, shall ensure that any Responsible Agency or public agency that has jurisdiction by law with respect to the project is notified regarding any early consultation.

If, during the early consultation process it is determined that the project will clearly have a significant effect on the environment, the City, as Lead Agency, may immediately dispense with the Initial Study and determine that an EIR is required.

(Reference: State CEQA Guidelines, § 15063.)

5.03 CONSULTATION WITH PRIVATE PROJECT APPLICANT.

During or immediately after preparation of an Initial Study for a private project, the City may consult with the applicant to determine if the applicant is willing to modify the project to reduce or avoid the significant effects identified in the Initial Study. If the project can be revised to avoid or mitigate effects to a level of insignificance and there is no substantial evidence before the City that the project, as revised, may have a significant effect on the environment, the City may prepare and adopt a Negative Declaration or Mitigated Negative Declaration. If any significant effect may still occur despite alterations of the project, an EIR must be prepared.

(Reference: State CEQA Guidelines, § 15063(g).)

5.04 PROJECTS SUBJECT TO NEPA.

Projects that are carried out, financed, or approved in whole or in part by a federal agency are subject to the provisions of NEPA in addition to CEQA. To the extent possible, the State CEQA Guidelines encourage the City, when it is a Lead Agency under CEQA, to use the federally-prepared Environmental Impact Statement ("EIS") or Finding of No Significant Impact ("FONSI") or to prepare a joint CEQA/NEPA document instead of preparing separate NEPA and CEQA documents for a project that is subject to both NEPA and CEQA. (State CEQA Guidelines section 15220.)

For example, the City should attempt to work in conjunction with the federal agency involved in the project to prepare a combined EIR-EIS or Negative Declaration-FONSI. (State CEQA Guidelines section 15222.) To avoid the need for the federal agency to prepare a separate document for the same project, the Lead Agency must involve the federal agency in the preparation of the joint document. The Lead Agency may also enter into a Memorandum of Understanding with the federal agency to ensure that both federal and state requirements are met.

The City is required to cooperate with the federal agency and to utilize joint planning processes, environmental research and studies, public hearings, and environmental documents to the fullest extent possible. (State CEQA Guidelines section 15226.) However, since NEPA does not require an examination of mitigation measures or growth-inducing impacts, analysis of mitigation measures and growth-inducing impacts will need to be added before NEPA documents may be used to satisfy CEQA. (State CEQA Guidelines section 15221.)

For projects that are subject to NEPA, a scoping meeting held pursuant to NEPA satisfies the CEQA scoping requirement as long as notice is provided to the agencies and individuals listed in Local Guidelines Section 7.10, and provided in accordance with these Local Guidelines.

If the federal agency refuses to cooperate with the City with regard to the preparation of joint documents, the City should attempt to involve a state agency in the preparation of the EIR, Negative Declaration, or Mitigated Negative Declaration. Since federal agencies are explicitly permitted to utilize environmental documents prepared by agencies of statewide jurisdiction, it is possible that the federal agency will reuse the state-prepared CEQA documents instead of requiring the applicant to fund a redundant set of federal environmental documents. (State CEQA Guidelines section 15228.)

Where the federal agency has circulated the EIS or FONSI and the circulation satisfied the requirements of CEQA and any other applicable laws, the City, when it is a Lead Agency under CEQA, may use the EIS or FONSI in place of an EIR or Negative Declaration without having to recirculate the federal documents. The City's intention to adopt the previously circulated EIS or FONSI must be publicly noticed in the same way as a Notice of Availability of a Draft EIR.

Special rules may apply when the environmental documents are prepared for projects involving the reuse of military bases. (See State CEQA Guidelines section 15225.)

5.05 AN INITIAL STUDY.

The Initial Study shall be used to determine whether a Negative Declaration, Mitigated Negative Declaration or an EIR shall be prepared for a project. It provides written documentation of whether the City found evidence of significant adverse impacts which might occur. The purposes of an Initial Study are to:

(a) Identify environmental impacts;
(b) Enable an applicant or Lead Agency to modify a project, mitigating adverse impacts before an EIR is written;
(c) Focus an EIR, if one is required, on potentially significant environmental effects;
(d) Facilitate environmental assessment early in the design of a project;
(e) Provide documentation of the factual basis for the finding in a Negative Declaration that a project will not have a significant effect on the environment;
(f) Eliminate unnecessary EIRs; and
(g) Determine whether a previously prepared EIR could be used for the project.

(Reference: State CEQA Guidelines, § 15063.)

5.06 CONTENTS OF INITIAL STUDY.

An Initial Study shall contain in brief form:

(a) A description of the project, including the location of the project. The project description must be consistent throughout the environmental review process;
(b) An identification of the environmental setting. The environmental setting is usually the existing physical environmental conditions in the vicinity of the project, as they exist at the time the Notice of Preparation is published, or if no Notice of Preparation is published, such as in the case of a Negative Declaration or Mitigated Negative Declaration, at the time environmental analysis begins. The environmental setting should describe both the project site and surrounding properties. The description should include, but not necessarily be limited to, a discussion of existing structures, land use, energy supplies, topography, water usage, soil stability, plants and animals, and any cultural, historical, or scenic aspects. This environmental setting will normally constitute the baseline physical conditions against which a Lead Agency may compare the project to determine whether an impact is significant;
(c) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries are briefly explained to show the evidence supporting the entries. The brief explanation may be through either a narrative or a reference to other information such as attached maps, photographs, or an earlier EIR or Negative Declaration or Mitigated Negative Declaration. A reference to another document should include a citation to the page or pages where the information is found;
(d) A discussion of ways to mitigate any significant effects identified;
(e) An examination of whether the project is consistent with existing zoning and local land use plans and other applicable land use controls;
(f) The name of the person or persons who prepared or participated in the Initial Study; and
(g) Identification of prior EIRs or environmental documents that could be used with the project.

(Reference: State CEQA Guidelines, § 15063(d).)

5.07 USE OF A CHECKLIST INITIAL STUDY.

When properly completed, the Environmental Checklist (Form "J") will meet the requirements of Local Guidelines Section 5.05 for an Initial Study provided that the entries on the checklist are explained. Either the Environmental Checklist (Form "J") should be expanded or a separate attachment should be prepared to describe the project, including its location, and to identify the environmental setting.

California courts have rejected the use of a bare, unsupported Environmental Checklist as an Initial Study. An Initial Study must contain more than mere conclusions. It must disclose supporting data or evidence upon which the Lead Agency relied in conducting the Initial Study. The Lead Agency must augment checklists with supporting factual data and reference information sources when completing the forms. Explanation of all "potential impact" answers should be provided on attached sheets. For controversial projects, it is advisable to state briefly why "no"

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answers were checked. If practicable, attach a list of reference materials, such as prior EIRs, plans, traffic studies, air quality data, or other supporting studies.

5.08 EVALUATING SIGNIFICANT ENVIRONMENTAL EFFECTS.

In evaluating the environmental significance of effects disclosed by the Initial Study, the Lead Agency shall consider:

(a) Whether the Initial Study and/or any comments received informally during consultations indicate that a fair argument can be made that the project may have a significant adverse environmental impact that cannot be mitigated to a level of insignificance. Even if a fair argument can be made to the contrary, an EIR should be prepared;

(b) Whether both primary (direct) and reasonably foreseeable secondary (indirect) consequences of the project were evaluated. Primary consequences are immediately related to the project, while secondary consequences are related more to the primary consequences than to the project itself. For example, secondary impacts upon the resources base, including land, air, water and energy use of an area, may result from population growth, a primary impact;

(c) Whether adverse social and economic changes will result from a physical change caused by the project. Adverse economic and social changes resulting from a project are not, in themselves, significant environmental effects. However, if such adverse changes cause physical changes in the environment, those consequences may be used as the basis for finding that the physical change is significant;

(d) Whether there is serious public controversy or disagreement among experts over the environmental effects of the project. However, the existence of public controversy or disagreement among experts does not, without more, require preparation of an EIR in the absence of substantial evidence of significant effects;

(e) Whether the cumulative impact of the project is significant and whether the incremental effects of the project are "cumulatively considerable" (as defined in Local Guidelines Section 11.14) when viewed in connection with the effects of past projects, current projects, and probable future projects. The City may conclude that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved plan or mitigation program (including, but not limited to, water quality control plan, air quality attainment or maintenance plan, integrated waste management plan, habitat conservation plan, natural community conservation plan, plans or regulations for the reduction of greenhouse gas emissions) that provides specific requirements that will avoid or substantially lessen the cumulative problem. To be used for this purpose, such a plan or program must be specified in law or adopted by the public agency with jurisdiction over the affected resources through a public review process. In relying on such a plan or program, the City should explain which requirements apply to the project and ensure that the project's incremental contribution is not cumulatively considerable; and

(f) Whether the project may cause a substantial adverse change in the significance of an archaeological or historical resource.

The City may use a threshold of significance (as that term is defined in State CEQA Guidelines section 15064.7) to determine whether a project may cause a significant environmental

impact. When using a threshold of significance, the City should briefly explain how compliance with the threshold means that the project's impacts are less than significant. Compliance with the threshold, however, does not relieve the City of the obligation to consider substantial evidence indicating that a project's environmental effects may still be significant.

(Reference: State CEQA Guidelines, § 15064(b)(2).)

5.09 DETERMINING THE SIGNIFICANCE OF TRANSPORTATION IMPACTS

On or about December 28, 2018, the California Natural Resources Agency added a new section to the State CEQA Guidelines—Section 15064.3, entitled "Determining the Significance of Transportation Impacts."

Section 15064.3 provides:

> (a) Purpose.
>
> This section describes specific considerations for evaluating a project's transportation impacts. Generally, vehicle miles traveled is the most appropriate measure of transportation impacts. For the purposes of this section, "vehicle miles traveled" refers to the amount and distance of automobile travel attributable to a project. Other relevant considerations may include the effects of the project on transit and non-motorized travel. Except as provided in subdivision (b)(2) below (regarding roadway capacity), a project's effect on automobile delay shall not constitute a significant environmental impact.
>
> (b) Criteria for Analyzing Transportation Impacts.
>
> (1) Land Use Projects. Vehicle miles traveled exceeding an applicable threshold of significance may indicate a significant impact. Generally, projects within one-half mile of either an existing major transit stop or a stop along an existing high quality transit corridor should be presumed to cause a less than significant transportation impact. Projects that decrease vehicle miles traveled in the project area compared to existing conditions should be presumed to have a less than significant transportation impact.
>
> (2) Transportation Projects. Transportation projects that reduce, or have no impact on, vehicle miles traveled should be presumed to cause a less than significant transportation impact. For roadway capacity projects, agencies have discretion to determine the appropriate measure of transportation impact consistent with CEQA and other applicable requirements. To the extent that such impacts have already been adequately addressed at a programmatic level, such as in a regional transportation plan EIR, a lead agency may tier from that analysis as provided in Section 15152.
>
> (3) Qualitative Analysis. If existing models or methods are not available to estimate the vehicle miles traveled for the particular project being considered, a lead agency

may analyze the project's vehicle miles traveled qualitatively. Such a qualitative analysis would evaluate factors such as the availability of transit, proximity to other destinations, etc. For many projects, a qualitative analysis of construction traffic may be appropriate.

(4) Methodology. A lead agency has discretion to choose the most appropriate methodology to evaluate a project's vehicle miles traveled, including whether to express the change in absolute terms, per capita, per household or in any other measure. A lead agency may use models to estimate a project's vehicle miles traveled, and may revise those estimates to reflect professional judgment based on substantial evidence. Any assumptions used to estimate vehicle miles traveled and any revisions to model outputs should be documented and explained in the environmental document prepared for the project. The standard of adequacy in Section 15151 shall apply to the analysis described in this section.

(c) Applicability.

The provisions of this section shall apply prospectively as described in section 15007. A lead agency may elect to be governed by the provisions of this section immediately. Beginning on July 1, 2020, the provisions of this section shall apply statewide.

As noted above, the City does not elect to be governed by the provisions of Section 15064.3 before July 1, 2020. (State CEQA Guidelines, § 15064.3(c).)

5.10 MANDATORY FINDINGS OF SIGNIFICANT EFFECT.

Whenever there is substantial evidence, in light of the whole record, that any of the conditions set forth below may occur, the Lead Agency shall find that the project may have a significant effect on the environment and thereby shall require preparation of an EIR:

(a) The project has the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of major periods of California history or prehistory;

(b) The project has the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals;

(c) The project has possible environmental effects which are individually limited but cumulatively considerable, as defined in Local Guidelines Section 11.14. That is, the City, when acting as Lead Agency, is required to determine whether the incremental impacts of a project are cumulatively considerable by evaluating them against the back-drop of the environmental effects of the other projects; or

(d) The environmental effects of a project will cause substantial adverse effects on humans either directly or indirectly.

If, before the release of the CEQA document for public review, the potential for triggering one of the mandatory findings of significance is avoided or mitigation measures or project modifications reduce the potentially significant impacts to a point where clearly the mandatory finding of significance is not triggered, preparation of an EIR is not mandated. If the project's potential for triggering one of the mandatory findings of significance cannot be avoided or mitigated to a point where the criterion is clearly not triggered, an EIR shall be prepared, and the relevant mandatory findings of significance shall be used:

(1) as thresholds of significance for purposes of preparing the EIR's impact analysis;

(2) in making findings on the feasibility of alternatives or mitigation measures;

(3) when found to be feasible, in making changes in the project to lessen or avoid the adverse environmental impacts; and

(4) when necessary, in adopting a statement of overriding considerations.

Although an EIR prepared for a project that triggers one of the mandatory findings of significance must use the relevant mandatory findings as thresholds of significance, the EIR need not conclude that the impact itself is significant. Rather, the City, as Lead Agency, must exercise its discretion and determine, on a case-by-case basis after evaluating all of the relevant evidence, whether the project's environmental impacts are avoided or mitigated below a level of significance or whether a statement of overriding considerations is required.

With regard to a project that has the potential to substantially reduce the number or restrict the range of a protected species, the City, as Lead Agency, does not have to prepare an EIR solely due to that impact, provided the project meets the following three criteria:

(a) The project proponent must be bound to implement mitigation requirements relating to such species and habitat pursuant to an approved habitat conservation plan and/or natural communities conservation plan;
(b) The state or federal agency must have approved the habitat conservation plan and/or natural community conservation plan in reliance on an EIR and/or EIS; and
(c) The mitigation requirements must either avoid any net loss of habitat and net reduction in number of the affected species, or preserve, restore, or enhance sufficient habitat to mitigate the reduction in habitat and number of the affected species below a level of significance.

(Reference: State CEQA Guidelines, § 15065.)

5.11 MANDATORY PREPARATION OF AN EIR FOR WASTE-BURNING PROJECTS.

Lead Agencies shall prepare or cause to be prepared and certify the completion of an EIR, or, if appropriate, an Addendum, Supplemental EIR, or Subsequent EIR, for any project involving the burning of municipal wastes, hazardous waste or refuse-derived fuel, including, but not limited to, tires, if the project consists of any of the following:

(a) The construction of a new facility;

(b) The expansion of an existing hazardous waste burning facility which would increase its permitted capacity by more than 10%;
(c) The issuance of a hazardous waste facilities permit to a land disposal facility, as defined in Local Guidelines Section 11.32; or
(d) The issuance of a hazardous waste facilities permit to an offsite large treatment facility, as defined in Local Guidelines Sections 11.33 and 11.53.

This section does not apply to projects listed in subsections (c) and (d), immediately above, if the facility only manages hazardous waste that is identified or listed pursuant to Health and Safety Code section 25140 or 25141 or only conducts activities which are regulated pursuant to Health and Safety Code sections 25100, et seq.

The Lead Agency shall calculate the percentage of expansion for an existing facility by comparing the proposed facility's capacity with either of the following, as applicable:

(a) The facility capacity authorized in the facility's hazardous waste facilities permit pursuant to Health and Safety Code section 25200, or its grant of interim status pursuant to Health and Safety Code section 25200.5, or the facility capacity authorized in any state or local agency permit allowing the construction or operation of the facility for the burning of hazardous waste granted before January 1, 1990; or
(b) The facility capacity authorized in the facility's original hazardous facilities permit, grant of interim status, or any state or local agency permit allowing the construction or operation of a facility for the burning of hazardous waste, granted on or after January 1, 1990.

This section does not apply to any project over which the State Energy Resources Conservation and Development Commission has assumed jurisdiction per Health and Safety Code sections 25500 et seq.

The EIR requirement is also subject to a number of exceptions for specific types of waste-burning projects. (Public Resources Code section 21151.1 and State CEQA Guidelines section 15081.5.) Even if preparation of an EIR is not mandatory for a particular type of waste-burning project, those projects are not exempt from the other requirements of CEQA, the State CEQA Guidelines, or these Local Guidelines. In addition, waste-burning projects are subject to special notice requirements under Public Resources Code section 21092. Specifically, in addition to the standard public notices required by CEQA, notice must be provided to all owners and occupants of property located within one-fourth mile of any parcel or parcels on which the waste-burning project will be located. (Public Resources Code section 21092(c); see Local Guidelines Sections 6.12 and 7.27.)

5.12 DEVELOPMENT PURSUANT TO AN EXISTING COMMUNITY PLAN AND EIR.

Before preparing a CEQA document, Staff should determine whether the proposed project involves development consistent with an earlier zoning or community plan to accommodate a particular density for which an EIR has been certified. If an earlier EIR for the zoning or planning action has been certified, and if the proposed project concerns the approval of a subdivision map or development, CEQA applies only to the extent the project raises environmental effects peculiar to the parcel which were not addressed in the earlier EIR. Off-site and cumulative effects not

discussed in the general plan EIR must still be considered. Mitigation measures set out in the earlier EIR should be implemented at this stage.

Environmental effects shall not be considered peculiar to the parcel if uniformly applied development policies or standards have been previously adopted by a city or county with a finding based on substantial evidence that the policy or standard will substantially mitigate the environmental effect when applied to future projects. Examples of uniformly applied development policies or standards include, but are not limited to: parking ordinances; public access requirements; grading ordinances; hillside development ordinances; flood plain ordinances; habitat protection or conservation ordinances; view protection ordinances; and requirements for reducing greenhouse gas emissions as set forth in adopted land use plans, policies or regulations. Any rezoning action consistent with the Community Plan shall be subject to exemption from CEQA in accordance with this section. "Community Plan" means part of a city's general plan which: (1) applies to a defined geographic portion of the total area included in the general plan; (2) complies with Article 5 (commencing with Section 65300) of Chapter 3 of Division 1 of Title 7 of the Government Code by referencing each of the mandatory elements specified in Government Code section 65302; and (3) contains specific development policies adopted for the area in the Community Plan and identifies measures to implement those policies, so that the policies which will apply to each parcel can be determined.

(Reference: State CEQA Guidelines, § 15183.)

5.13 LAND USE POLICIES.

When a project will amend a general plan or another land use policy, the Initial Study must address how the change in policy and its expected direct and indirect effects will affect the environment. When the amendments constitute substantial changes in policies that result in a significant impact on the environment, an EIR may be required.

5.14 EVALUATING IMPACTS ON HISTORICAL RESOURCES.

Projects that may cause a substantial adverse change in the significance of a historical resource, as defined in Local Guidelines Section 11.28 are projects that may have a significant effect on the environment, thus requiring consideration under CEQA. Particular attention and care should be given when considering such projects, especially projects involving the demolition of a historical resource, since such demolitions have been determined to cause a significant effect on the environment.

Substantial adverse change in the significance of a historical resource means physical demolition, destruction, relocation or alteration of the resource or its immediate surroundings, such that the significance of a historical resource would be materially impaired.

The significance of a historical resource is materially impaired when a project:

(a) Demolishes or materially alters in an adverse manner those physical characteristics of a historical resource that convey its historical significance and that justify its inclusion in, or eligibility for inclusion in, the California Register of Historical Resources;

(b) Demolishes or materially alters in an adverse manner those physical characteristics that account for its inclusion in a local register of historical resources or its identification in a historical resources survey, unless the Lead Agency establishes by a preponderance of evidence that the resource is not historically or culturally significant; or

(c) Demolishes or materially alters in an adverse manner those physical characteristics of a historical resource that convey its historical significance and that justify its eligibility for inclusion in the California Register of Historical Resources as determined by the Lead Agency for purposes of CEQA.

Generally, a project that follows either one of the following sets of standards and guidelines will be considered mitigated to a level of less than significant: (a) the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings; or (b) the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (1995), Weeks and Grimmer.

In the event of an accidental discovery of a possible historical resource during construction of the project, the City may provide for the evaluation of the find by a qualified archaeologist or other professional. If the find is determined to be a historical resource, the City should take appropriate steps to implement appropriate avoidance or mitigation measures. Work on non-affected portions of the project, as determined by the City, may continue during the process. Curation may be an appropriate mitigation measure for an artifact that must be removed during project excavation or testing.

(Reference: State CEQA Guidelines, § 15064.5.)

5.15 EVALUATING IMPACTS ON ARCHAEOLOGICAL SITES.

When a project will impact an archaeological site, the City shall first determine whether the site is a historical resource, as defined in Local Guidelines Section 11.28 If the archaeological site is a historical resource, it shall be treated and evaluated as such, and not as an archaeological resource. If the archaeological site does not meet the definition of a historical resource, but does meet the definition of a unique archaeological resource set forth in Public Resources Code section 21083.2, the site shall be treated in accordance with said provisions of the Public Resources Code. The time and cost limitations described in Section 21083.2(c-f) do not apply to surveys and site evaluation activities intended to determine whether the project site contains unique archaeological resources.

If the archaeological resource is neither a unique archaeological resource nor a historical resource, the effects of the project on those resources shall not be considered a significant effect on the environment. It shall be sufficient that both the resource and the effect on it are noted in the Initial Study or EIR, if one is prepared to address impacts on other resources, but they need not be considered further in the CEQA process.

In the event of an accidental discovery of a possible unique archaeological resource during construction of the project, the City may provide for the evaluation of the find by a qualified archaeologist. If the find is determined to be a unique archaeological resource, the City should

take appropriate steps to implement appropriate avoidance or mitigation measures. Work on non-affected portions of the project, as determined by the City, may continue during the process. Curation may be an appropriate mitigation measure for an artifact that must be removed during project excavation or testing.

When an Initial Study identifies the existence of, or the probable likelihood of, Native American human remains within the Project, the City shall comply with the provisions of State CEQA Guidelines section 15064.5(d). In the event of an accidental discovery or recognition of any human remains in any location other than a dedicated cemetery, the City shall comply with the provisions of State CEQA Guidelines section 15064.5(e).

(Reference: State CEQA Guidelines, § 15064.5(c).)

5.16 CONSULTATION WITH WATER AGENCIES REGARDING LARGE DEVELOPMENT PROJECTS.

(a) Projects Subject to Consultation Requirements.

For certain development projects, cities and counties must consult with water agencies. If the City is a municipal water provider, the city or county may request that the City prepare a water supply assessment to be included in the relevant environmental documentation for the project. The City may refer to this section when preparing such an assessment or when reviewing projects in its role as a Responsible Agency. This section applies only to water demand projects as defined by Guideline 11.78. Program level environmental review may not need to be as extensive as project level environmental review. (See Local Guidelines Sections 8.03 and 8.08.)

(b) Water Supply Assessment.

When a city or county as Lead Agency determines the type of environmental document that will be prepared for a water demand project or any project that includes a water demand project, the city or county must identify any public water system (as defined in Local Guidelines Sections 11.59 and 11.83) that may supply water for the project. The city or county must also request that the public water system determine whether the projected demand associated with the project was included in the most recently adopted Urban Water Management Plan. The city or county must also request that the public water system prepare a specified water supply assessment for approval at a regular or special meeting of the public water system governing body.

If no public water system is identified that may supply water for the water demand project, the city or county shall prepare the water supply assessment. The city or county shall consult with any entity serving domestic water supplies whose service area includes the site of the water demand project, the local agency formation commission, and the governing body of any public water system adjacent to the site of the water demand project. The city council or county board of supervisors must approve the water assessment prepared pursuant to this paragraph at a regular or special meeting.

As per Water Code section 10910, the water assessment must include identification of existing water supply entitlements, water rights, or water service contracts relevant to the water supply for the proposed project and water received in prior years pursuant to those entitlements,

rights, and contracts, and further information is required if water supplies include groundwater. The water assessment must determine the ability of the public water system to meet existing and future demands along with the demands of the proposed water demand project in light of existing and future water supplies. This supply demand analysis is to be conducted via a twenty-year projection, and must assess water supply sufficiency during normal year, single dry year, and multiple dry year hydrology scenarios. If the public water agency concludes that the water supply is, or will be, insufficient, it must submit plans for acquiring additional water supplies.

The city or county may grant the public water agency a thirty (30) day extension of time to prepare the assessment if the public water agency requests an extension within ninety (90) days of being asked to prepare the assessment. If the governing body of the public water system fails to request and receive an extension of time, or fails to submit the water assessment notwithstanding the thirty (30) day extension, the city or county may seek a writ of mandamus to compel the governing body of the public water system to comply.

If a water-demand project has been the subject of a water assessment, no additional water assessment shall be required for subsequent water-demand projects that were included in the larger water-demand project if all of the following criteria are met:

(1) The entity completing the water assessment concluded that its water supplies are sufficient to meet the projected water demand associated with the larger water-demand project, in addition to the existing and planned future uses, including, but not limited to, agricultural and industrial uses; and

(2) None of the following changes has occurred since the completion of the water assessment for the larger water-demand project:

(A) Changes in the larger water-demand project that result in a substantial increase in water demand for the water-demand project;

(B) Changes in the circumstances or conditions substantially affecting the ability of the public water system identified in the water assessment to provide a sufficient supply of water for the water demand project; and

(C) Significant new information becomes available which was not known and could not have been known at the time when the entity had reached its assessment conclusions. The city or county shall include the water assessment, and any water acquisition plan in the EIR, negative declaration, or mitigated negative declaration, or any supplement thereto, prepared for the project, and may include an evaluation of the water assessment and water acquisition plan information within such environmental document. A discussion of water supply availability should be included in the main text of the environmental document. Normally, this discussion should be based on the data and information included in the water supply assessment. In making its required findings under CEQA, the city or county shall determine, based on the entire record, whether projected water supplies will be sufficient to satisfy the demands of the project, in addition to existing and planned future uses. If a city or county determines that water supplies will not be sufficient, the city or county shall include that determination in its findings for the project.

The degree of certainty regarding the availability of water supplies will vary depending on the stage of project approval. A Lead Agency should have greater confidence in the availability of water supplies for a specific project than might be required for a conceptual plan (i.e. general plan, specific plan). An analysis of water supply in an environmental document may incorporate by reference information in a water supply assessment, urban water management plan, or other publicly available sources. The analysis shall include the following:

(1) Sufficient information regarding the project's proposed water demand and proposed water supplies to permit the Lead Agency to evaluate the pros and cons of supplying the amount of water that the project will need.

(2) An analysis of the reasonably foreseeable environmental impacts of supplying water throughout all phases of the project.

(3) An analysis of circumstances affecting the likelihood of the water's availability, as well as the degree of uncertainty involved. Relevant factors may include but are not limited to, drought, salt-water intrusion, regulatory or contractual curtailments, and other reasonably foreseeable demands on the water supply.

(4) If the Lead Agency cannot determine that a particular water supply will be available, it shall conduct an analysis of alternative sources, including at least in general terms the environmental consequences of using those alternative sources, or alternatives to the project that could be served with available water.

For complete information on these requirements, consult Water Code sections 10910, et seq. For other CEQA provisions applicable to these types of projects, see Local Guidelines Sections 7.03 and 7.25.

5.17 SUBDIVISIONS WITH MORE THAN 500 DWELLING UNITS.

Cities and counties must obtain written verification (see Form "O" for a sample) from the applicable public water system(s) that a sufficient water supply is available before approving certain residential development projects. If the City is a municipal water provider for a project, the city or county may request such a verification from the City. The City should also be aware of these requirements when reviewing projects in its role as a Responsible Agency.

Cities and counties are prohibited from approving a tentative map, parcel map for which a tentative map was not required, or a development agreement for a subdivision of property of more than 500 dwellings units, unless:

(1) The City Council, Board of Supervisors, or the advisory agency receives written verification from the applicable public water system that a sufficient water supply is available; or

(2) Under certain circumstances, the City Council, Board of Supervisors or the advisory agency makes a specified finding that sufficient water supplies are, or will be, available prior to completion of the project.

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For complete information on these requirements, consult Government Code section 66473.7.

5.18 IMPACTS TO OAK WOODLANDS.

When a county prepares an Initial Study to determine what type of environmental document will be prepared for a project within its jurisdiction, the county must determine whether the project may result in a conversion of oak woodlands that will have a significant effect on the environment. Normally, this rule will not apply to projects undertaken by the City. However, if the City is a Responsible Agency on such a project, the City should endeavor to ensure that the county, as Lead Agency, analyzes these impacts in accordance with CEQA.

(Reference: Pub. Resources Code, § 21083.4.)

5.19 CLIMATE CHANGE AND GREENHOUSE GAS EMISSIONS.

A. Estimating or Calculating the Magnitude of the Project's Greenhouse Gas Emissions.

The City shall analyze the greenhouse gas emissions of its projects as required by State CEQA Guidelines section 15064.4. For projects subject to CEQA, the City shall make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project.

In performing analysis of greenhouse gas emissions, the City, as Lead Agency, shall have discretion to determine, in the context of a particular project, whether to:

(1) Quantify greenhouse gas emissions resulting from a project; and/ or

(2) Rely on a qualitative analysis or performance-based standards.

B. Factors in Determining Significance.

In determining the significance of a project's greenhouse gas emissions, the City, when acting as Lead Agency, should focus its analysis on the reasonably foreseeable incremental contribution of the project's emissions to the effects of climate change. A project's incremental contribution may be cumulatively considerable even if it appears relatively small compared to statewide, national, or global emissions. The City's analysis should consider a timeframe that is appropriate for the project. The City's analysis also must reasonably reflect evolving scientific knowledge and state regulatory schemes.

Once the amount of a project's greenhouse gas emissions have been described, estimated, or calculated, the City should consider the following factors, among others, to determine whether those emissions are significant:

(1) The extent to which the project may increase or reduce greenhouse gas emissions as compared to the existing environmental setting. Physical environmental conditions in the vicinity of the project, as they exist at the

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time the Notice of Preparation is published or the time when the environmental analysis is commenced, will normally constitute the baseline. All project phases, including construction and operation, should be considered in determining whether a project will cause emissions to increase or decrease as compared to the baseline;

(2) Whether the project emissions exceed a threshold of significance that the Lead Agency determines applies to the project. The Lead Agency may rely on thresholds of significance developed by experts or other agencies, provided that application of the threshold and the significance conclusion is supported with substantial evidence. When relying on thresholds developed by other agencies, the Lead Agency should ensure that the threshold is appropriate for the project and the project's location; and

(3) The extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions (see, e.g., State CEQA Guidelines section 15183.5(b)). Such requirements must be adopted by the relevant public agency through a public review process and must reduce or mitigate the project's incremental contribution of greenhouse gas emissions. If there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding compliance with the adopted regulations or requirements, an EIR must be prepared for the project. In determining the significance of impacts, the Lead Agency may consider a project's consistency with the State's long-term climate goals or strategies, provided that substantial evidence supports the agency's analysis of how those goals or strategies address the project's incremental contribution to climate change and its conclusion that the project's incremental contribution is not cumulatively considerable.

The Lead Agency may use a model or methodology to estimate greenhouse gas emissions resulting from a project. The Lead Agency has discretion to select the model or methodology it considers most appropriate to enable decision makers to intelligently take into account the project's incremental contribution to climate change. The Lead Agency must support its selection of a model or methodology with substantial evidence. The Lead Agency should explain the limitations of the particular model or methodology selected for use.

C. Consistency with Applicable Plans.

When an EIR is prepared, it must discuss any inconsistencies between the proposed project and any applicable general plan, specific plans, and regional plans. This includes, but is not limited to, any applicable air quality attainment plans, regional blueprint plans, or plans for the reduction of greenhouse gas emissions.

D. Mitigation Measures Related to Greenhouse Gas Emissions.

Lead Agencies must consider feasible means of mitigating the significant effects of greenhouse gas emissions. Any such mitigation measure must be supported by substantial evidence and be subject to monitoring or reporting. Potential mitigation will depend on the particular circumstances of the project, but may include the following, among others:

(1) Measures in an existing plan or mitigation program for the reduction of emissions that are required as part of the Lead Agency's decision;

(2) Reductions in emissions resulting from a project through implementation of project features, project design, or other measures, such as those described in State CEQA Guidelines Appendix F;

(3) Off-site measures, including offsets that are not otherwise required, to mitigate a project's emissions;

(4) Measures that sequester greenhouse gases; and

(5) In the case of the adoption of a plan, such as a general plan, long range development plan, or plan for the reduction of greenhouse gas emissions, mitigation may include the identification of specific measures that may be implemented on a project-by-project basis. Mitigation may also include the incorporation of specific measures or policies found in an adopted ordinance or regulation that reduces the cumulative effect of emissions.

E. Streamlined Analysis of Greenhouse Gas Emissions.

Under certain limited circumstances, the legislature has specifically declared that the analysis of greenhouse gas emissions or climate change impacts may be limited. Public Resources Code sections 21155, 21155.2, and 21159.28 provide that if certain residential, mixed use and transit priority projects meet specified ratios and densities, then the lead agencies for those projects may conduct a limited review of greenhouse gas emissions or may be exempted from analyzing global warming impacts that result from cars and light duty trucks, if a detailed list of requirements is met. However, unless the project is exempt from CEQA, the Lead Agency must consider whether such projects will result in greenhouse gas emissions from other sources, including, but not limited to, energy use, water use, and solid waste disposal.

F. Tiering.

The City may analyze and mitigate the significant effects of greenhouse gas emissions at a programmatic level. Later project-specific environmental documents may then tier from and/or incorporate by reference that existing programmatic review.

G. Plans for the Reduction of Greenhouse Gas Emissions.

Public agencies may choose to analyze and mitigate greenhouse gas emissions in a plan for the reduction of greenhouse gas emissions or in a similar document. A plan for the reduction of greenhouse gas emissions should:

(1) Quantify greenhouse gas emissions, both existing and projected over a specified time period, resulting from activities within a defined geographic area;

(2) Establish a level, based on substantial evidence, below which the contribution to greenhouse gas emissions from activities covered by the plan would not be cumulatively considerable;

(3) Identify and analyze the greenhouse gas emissions resulting from specific actions or categories of actions anticipated within the geographic area;

(4) Specify measures or a group of measures, including performance standards, that substantial evidence demonstrates, if implemented on a project-by-project basis, would collectively achieve the specified emissions level;

(5) Establish a mechanism to monitor the plan's progress toward achieving the level and to require amendment if the plan is not achieving specified levels; and

(6) Be adopted in a public process following environmental review.

A plan for the reduction of greenhouse gas emissions, once adopted following certification of an EIR, or adoption of another environmental document, may be used in the cumulative impacts analysis of later projects. An environmental document that relies on a plan for the reduction of greenhouse gas emissions for a cumulative impacts analysis must identify those requirements specified in the plan that apply to the project, and, if those requirements are not otherwise binding and enforceable, incorporate those requirements as mitigation measures applicable to the project. If there is substantial evidence that the effects of a particular project may be cumulatively considerable notwithstanding the project's compliance with the specified requirements in the plan for reduction of greenhouse gas emissions, an EIR must be prepared for the project.

H. Analyzing the Effects of Climate Change on the Project.

Where an EIR is prepared for a project, the EIR shall analyze any significant environmental effects the project might cause by bringing development and people into the project area that may be affected by climate change. In particular, the EIR should evaluate any potentially significant impacts of locating development in areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas) as identified in authoritative hazard maps, risk assessments or in land use plans addressing such hazards areas. The analysis may be limited to the potentially significant effects of locating the project in a potentially hazardous location. Further, this analysis may be limited by the project's life in relation to the potential of such effects to occur and the availability of existing information related to potential future effects of climate change. Further, the EIR need not include speculation regarding such future effects.

5.20 ENERGY CONSERVATION.

Potentially significant energy implications of a project must be considered in an EIR to the extent relevant and applicable to the project. Therefore, the project description should identify the following as applicable or relevant to the particular project:

(1) Energy consuming equipment and processes which will be used during construction, operation and/or removal of the project. If appropriate, this discussion should consider the energy intensiveness of materials and equipment required for the project;

(2) Total energy requirements of the project by fuel type and end use;

(3) Energy conservation equipment and design features;

(4) Identification of energy supplies that would serve the project; and

(5) Total estimated daily vehicle trips to be generated by the project and the additional energy consumed per trip by mode.

As described in Local Guidelines Section 5.06, above, an initial study must include a description of the environmental setting. The discussion of the environmental setting may include existing energy supplies and energy use patterns in the region and locality. The City may also consider the extent to which energy supplies have been adequately considered in other environmental documents. Environmental impacts may include:

(1) The project's energy requirements and its energy use efficiencies by amount and fuel type for each stage of the project including construction, operation, maintenance and/or removal. If appropriate, the energy intensiveness of materials may be discussed;

(2) The effects of the project on local and regional energy supplies and on requirements for additional capacity;

(3) The effects of the project on peak and base period demands for electricity and other forms of energy;

(4) The degree to which the project complies with existing energy standards;

(5) The effects of the project on energy resources; and/or

(6) The project's projected transportation energy use requirements and its overall use of efficient transportation alternatives.

As discussed above in Section 5.06, the Initial Study must identify the potential environmental effects of the proposed activity. That discussion must include the unavoidable adverse effects. Unavoidable adverse effects may include wasteful, inefficient and unnecessary consumption of energy during the project construction, operation, maintenance and/or removal that cannot be feasibly mitigated.

When discussing energy conservation, alternatives should be compared in terms of overall energy consumption and in terms of reducing wasteful, inefficient and unnecessary consumption of energy.

5.21 ENVIRONMENTAL IMPACT ASSESSMENT.

The Initial Study identifies which environmental impacts may be significant. Based upon the Initial Study, Staff shall determine whether a proposed project may or will have a significant effect on the environment. Such determination shall be made in writing on the Environmental Impact Assessment Form (Form "C"). If Staff finds that a project will not have a significant effect on the environment, it shall recommend that a Negative Declaration be prepared and adopted by the decision-making body. If Staff finds that a project may have a significant effect on the environment, but the effects can be mitigated to a level of insignificance, it shall recommend that a Mitigated Negative Declaration be prepared and adopted by the decision-making body. If Staff finds that a project may have a significant effect on the environment, it shall recommend that an EIR be prepared and certified by the decision-making body.

5.22 FINAL DETERMINATION.

The City Council shall have the final responsibility for determining whether an EIR, Negative Declaration or Mitigated Negative Declaration shall be required for any project. The City Council's determination shall be final and conclusive on all persons, including Responsible Agencies and Trustee Agencies, except as provided in Section 15050(c) of the State CEQA Guidelines. Additionally, in the event the City Council has delegated authority to a subsidiary board or official to approve a project, the City Council also hereby delegates to that subsidiary board or official the authority to make all necessary CEQA determinations, including whether an EIR, Negative Declaration, Mitigated Negative Declaration or exemption shall be required for any project. A subsidiary board or official's CEQA determination shall be subject to appeal consistent with the City's established procedures for appeals.

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6. NEGATIVE DECLARATION

6.01 DECISION TO PREPARE A NEGATIVE DECLARATION.

A Negative Declaration (Form "E") shall be prepared for a project subject to CEQA when the Initial Study shows that there is no substantial evidence in light of the whole record that the project may have a significant or potentially significant adverse effect on the environment. (See Local Guidelines Sections 11.65 and 11.71.)

(Reference: State CEQA Guidelines, § 15070(a).)

6.02 DECISION TO PREPARE A MITIGATED NEGATIVE DECLARATION.

A Mitigated Negative Declaration (Form "E") shall be prepared for a project subject to CEQA when the Initial Study identifies potentially significant effects on the environment, but:

(a) The project applicant has agreed to revise the project or the City can revise the project to avoid these significant effects or to mitigate the effects to a point where it is clear that no significant effects would occur; or
(b) There is no substantial evidence in light of the whole record before the City that the revised project may have a significant effect.

It is insufficient to require an applicant to adopt mitigation measures after final adoption of the Mitigated Negative Declaration or to state that mitigation measures will be recommended on the basis of a future study. The City must know the measures at the time the Mitigated Negative Declaration is adopted in order for them to be evaluated and accepted as adequate mitigation. Evidence of agreement by the applicant to such mitigation should be in the record prior to public review. Except where noted, the procedural requirements for the preparation and approval of a Negative Declaration and Mitigated Negative Declaration are the same.

(Reference: State CEQA Guidelines, § 15070(b).)

6.03 CONTRACTING FOR PREPARATION OF NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION.

The City, when acting as Lead Agency, is responsible for preparing all documents required pursuant to CEQA. The documents may be prepared by Staff or by private consultants pursuant to a contract with the City, but they must be the City's product and reflect the independent judgment of the City.

6.04 NOTICE OF INTENT TO ADOPT A NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION.

When, based upon the Initial Study, it is recommended to the decision-making body that a Negative Declaration or Mitigated Negative Declaration be adopted, a Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration (Form "D") shall be prepared. In addition to being provided to the public through the means set forth in Local Guidelines Section 6.07, this Notice shall also be provided to:

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(a) Each Responsible and Trustee Agency;
(b) Any other federal, state, or local agency that has jurisdiction by law or exercises authority over resources affected by the project, including:

(1) Any water supply agency consulted under Local Guidelines Section 5.16;

(2) Any city or county bordering on the project area;

(3) For a project of statewide, regional, or area-wide significance, to any transportation agencies or public agencies which have major local arterials or public transit facilities within five (5) miles of the project site or freeways, highways, or rail transit service within ten (10) miles of the project site which could be affected by the project; and

(4) For a subdivision project located within one mile of a facility of the State Water Resources Development System, to the California Department of Water Resources;

(c) The last known name and address of all organizations and individuals who have previously filed a written request with the City to receive these Notices;
(d) For certain projects that may impact a low-level flight path, military impact zone, or special use airspace and that meet the other criteria of Local Guidelines Section 6.05, to the specified military services contact;
(e) For certain projects that involve the construction or alteration of a facility anticipated to include hazardous air emissions or handle hazardous substances within one-quarter mile of a school and that meet the other requirements of Local Guidelines Section 6.06, to any potentially affected school district;
(f) For certain waste-burning projects that meet the requirements of Local Guidelines Section 5.11 (regarding mandatory preparation of EIR) (see also Local Guidelines Section 7.27), to the owners and occupants of property within one-fourth mile of any parcel on which the project will be located; and
(g) For a project that establishes or amends a redevelopment plan that contains land in agricultural use, notice shall be provided to the agricultural and farm agencies and organizations specified in Health and Safety Code section 33333.3.

The Notice of Intent must also be posted to the Lead Agency's website, if any. (Pub. Resources Code, § 21092.2(d).) Additionally, for a project of statewide, regional, or area-wide significance, the Lead Agency should also consult with public transit agencies with facilities within one-half mile of the proposed project.

A copy of the proposed Negative Declaration or Mitigated Negative Declaration and the Initial Study shall be attached to the Notice of Intent to Adopt that is sent to every Responsible Agency and Trustee Agency concerned with the project and every other public agency with jurisdiction by law over resources affected by the project.

The public review period for a Negative Declaration or Mitigated Negative Declaration shall not be less than twenty (20) days; the public review period shall be at least thirty (30) days where the Negative Declaration or Mitigated Negative Declaration is for a proposed project where

(1) a state agency is the lead agency, a responsible agency, or a trustee agency; (2) a state agency otherwise has jurisdiction by law with respect to the project; or (3) the proposed project is of sufficient statewide, regional, or area-wide significance as determined pursuant to State CEQA Guidelines section 15206. The Lead Agency shall give notice of the public review period by filing and posting a Notice of Intent to Adopt a Negative Declaration (Form "D") with the County Clerk before commencement of the public review period; where a public review period of at least 30 days is required, the Lead Agency shall also electronically submit the Notice of Intent to the State Clearinghouse. (Pub. Resources Code, § 21091.)

For purposes of calculating the length of the public review period, the last day of the public review period cannot fall on a weekend, a legal holiday, or other day on which the lead agency's offices are closed.[1] (Reference: *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690, 708.)

If the Negative Declaration or Mitigated Negative Declaration has been submitted to the State Clearinghouse for review by state agencies, the public review period shall be at least as long as the period of review and comment by state agencies. (See Local Guidelines Section 6.10.) Day one of the state agency review period shall be the date that the State Clearinghouse distributes the Negative Declaration or Mitigated Negative Declaration to state agencies.

The Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration shall contain the following information:

(a) The period during which comments shall be received;
(b) The date, time and place of any public meetings or hearings on the proposed project;
(c) A brief description of the proposed project and its location;
(d) The address where copies of the proposed Negative Declaration or Mitigated Negative Declaration and all documents incorporated by reference in the proposed Negative Declaration or Mitigated Negative Declaration are available for review;
(e) A description of how the proposed Negative Declaration or Mitigated Negative Declaration can be obtained in electronic format;
(f) The Environmental Protection Agency ("EPA") list on which the proposed project site is located, if applicable, and the corresponding information from the applicant's statement (see Local Guidelines Section 2.05); and
(g) The significant effects on the environment, if any, anticipated as a result of the proposed project.

(Reference: Pub. Resources Code, §§ 21082.1, 21091, 21161; State CEQA Guidelines, §§ 15072, 15105, 15205.)

[1] A public agency's "offices are closed" for purposes of this section on days in which the agency is formally closed for business (for example, due to a weekend, a legal holiday, or a formal furlough affecting the entire office). A public agency's office is not considered closed for purposes of this section where the agency's office may be physically closed, but the agency is nonetheless open for business and is operating remotely or virtually (for example, in response to the Covid-19 pandemic).

6.05 PROJECTS AFFECTING MILITARY SERVICES; DEPARTMENT OF DEFENSE NOTIFICATION.

CEQA imposes additional requirements to provide notice to potentially affected military agencies when:

(a) The project meets one of the following three criteria:

(1) The project includes a general plan amendment;

(2) The project is of statewide, regional, or area-wide significance; or

(3) The project relates to a public use airport or certain lands surrounding a public use airport; and

(b) A "military service" (defined in Section 11.42 of these Local Guidelines) has provided its contact office and address and notified the Lead Agency of the specific boundaries of a "low-level flight path" (defined in Section 11.37 of these Local Guidelines), "military impact zone" (defined in Section 11.41 of these Local Guidelines), or "special use airspace" (defined in Section 11.67 of these Local Guidelines).

When a project meets these requirements, the City must provide the military service's designated contact with a copy of the Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration that has been prepared for the project, unless the project involves the remediation of lands contaminated with hazardous wastes and meets certain other requirements. See Public Resources Code sections 21080.4 and 21092 and Health and Safety Code sections 25300, et seq.; 25396; and 25187.

The City must provide the military service with sufficient notice of its intent to adopt a Negative Declaration or Mitigated Negative Declaration to ensure that the military service has no fewer than twenty (20) days to review the documents before they are approved, provided that the military service shall have a minimum of thirty (30) days to review the environmental documents if the documents have been submitted to the State Clearinghouse. See State CEQA Guidelines sections 15105(b) and 15190.5(c).

6.06 SPECIAL FINDINGS REQUIRED FOR FACILITIES THAT MAY EMIT HAZARDOUS AIR EMISSIONS NEAR SCHOOLS.

Special procedural rules apply to projects involving the construction or alteration of a facility within one-quarter mile of a school/schools when: (1) the facility might reasonably be anticipated to emit hazardous air emissions or to handle an extremely hazardous substance or a mixture containing extremely hazardous substances in a quantity equal to or greater than the threshold specified in Health and Safety Code section 25532(j), and (2) the emissions or substances may pose a health or safety hazard to persons who would attend or would be employed at the school. If the project meets both of those criteria, a Lead Agency may not approve a Negative Declaration or a Mitigated Negative Declaration unless both of the following have occurred:

(a) The Lead Agency consulted with the affected school district or districts having jurisdiction over the school regarding the potential impact of the project on the school; and
(b) The school district(s) was given written notification of the project not less than thirty (30) days prior to the proposed approval of the Negative Declaration.

When the City is considering the adoption of a Negative Declaration or Mitigated Negative Declaration for a project that meets these criteria, it can satisfy this requirement by providing the Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration, the proposed Negative Declaration or Mitigated Negative Declaration, and the Initial Study to the potentially affected school district at least thirty (30) days before the decision-making body will consider the adoption of the Negative Declaration or Mitigated Negative Declaration. See also Local Guidelines Section 6.04.

Implementation of this Guideline shall be consistent with the definitions and terms utilized in State CEQA Guidelines section 15186.

6.07 CONSULTATION WITH CALIFORNIA NATIVE AMERICAN TRIBES.

Prior to the release of a Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration for a project, the Lead Agency shall begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project if:

(a) The California Native American tribe requested to the Lead Agency, in writing, to be informed by the Lead Agency through formal notification of proposed projects in the geographic area that is traditionally and culturally affiliated with the tribe; and

(b) The California Native American tribe responds, in writing, within 30 days of receipt of the formal notification, and requests the consultation. The California Native American tribe shall designate a lead contact person when responding to the Lead Agency. If a lead contact is not designated by the California Native American tribe, or it designates multiple lead contact people, the Lead Agency shall defer to the individuals listed on the contact list maintained by the Native American Heritage Commission. Consultation is defined in Local Guidelines Section 11.12.

To expedite the requirements of this section, the Native American Heritage Commission shall assist the Lead Agency in identifying the California American Native tribes that are traditionally and culturally affiliated with the project area.

Within 14 days of determining that an application for a project is complete or a decision by a public agency to undertake a project, the Lead Agency shall provide formal notification to the designated contact of, or a trial representative of, traditionally and culturally affiliated California Native America tribes that have requested notice, which shall be accomplished by at least one written notification that includes a brief description of the proposed project and its location, the Lead Agency contact information, and a notification that the California Native American tribe has 30 days to request consultation. Where the application for a housing

development project is deemed to be complete on or after March 4, 2020 and before December 31, 2021, the California Native American tribe shall have 60 days to respond to the Lead Agency and request consultation. (Reference: Gov. Code, § 65583(i).)

The Lead Agency shall begin the consultation process within 30 days of receiving a California Native American tribe's request for consultation.

If consultation is requested, the parties may propose mitigation measures, including those set forth in Public Resources Code section 21084.3, capable of avoiding or substantially lessening potential significant impacts to a tribal cultural resource or alternatives that would avoid significant impacts to a tribal cultural resource. The consultation may include discussion concerning the type of environmental review necessary, the significance of tribal cultural resources, the significance of the project's impacts on the tribal cultural resources, and, if necessary, project alternatives or the appropriate measures for preservation or mitigation that the California Native American tribe may recommend to the Lead Agency.

The consultation shall be considered concluded when either of the following occurs:

(1) The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource.

(2) A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached.

The California Native American tribe is not limited in its ability to submit information to the lead agency regarding the significance of the tribal cultural resources, the significance of the project's impact on tribal cultural resources, or any appropriate measures to mitigate the impacts. Additionally, the lead agency or project proponent is not limited in its ability to incorporate changes and additions to the project as a result of the consultation, even if not legally required.

(Reference: Pub. Resources Code, §§ 21080.3.1, 21080.3.2.)

6.08 IDENTIFICATION OF TRIBAL CULTURAL RESOURCES AND PROCESSING OF INFORMATION AFTER CONSULTATION WITH THE CALIFORNIA NATIVE AMERICAN TRIBE

After consultation with the California Native American tribe listed above in Local Guidelines Section 6.07, any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code section 21080.3.2 shall be recommended for inclusion in the Mitigated Negative Declaration and in an adopted mitigation monitoring and reporting program, if the mitigation measures are determined to avoid or lessen the proposed project's impacts on tribal cultural resources, and if the mitigation measures are enforceable.

If a project may have a significant impact on a tribal cultural resource, the Lead Agency's Mitigated Negative Declaration shall discuss both of the following:

(a) Whether the proposed project has a significant impact on an identified tribal cultural resource;

(b) Whether feasible alternatives or mitigation measures, including those measures that may be agreed to during the consultation, avoid or substantially lessen the impact on the identified tribal cultural resource.

Any information provided regarding the location, description and use of the tribal cultural resource that is submitted by a California Native American tribe during the environmental review process shall not be included in the Negative Declaration or Mitigated Negative Declaration or otherwise disclosed by the Lead Agency or any other public agency to the public, consistent with Government Code section 7927.005 and State CEQA Guidelines section 15120(d), without the prior consent of the tribe that provided the information. If the Lead Agency publishes any information submitted by a California Native American tribe during the consultation or environmental review process, that information shall be published in a confidential appendix to the Negative Declaration or Mitigated Negative Declaration unless the tribe provides consent, in writing, to the disclosure of some or all of the information to the public. This does not prohibit the confidential exchange of the submitted information between public agencies that have lawful jurisdiction over the preparation of the Negative Declaration or the Mitigated Negative Declaration.

The exchange of confidential information regarding tribal cultural resources submitted by a California Native American tribe during the consultation or environmental review process among the Lead Agency, the California Native American tribe, the project applicant, or the project applicant's agent is not prohibited by Public Resources Code section 21082.3. The project applicant and the project applicant's legal advisers must use a reasonable degree of care and maintain the confidentiality of the information exchanged for the purposes of preventing looting, vandalism, or damage to tribal cultural resources and shall not disclose to a third party confidential information regarding the cultural resource unless the California Native American tribe providing the information consents in writing to the public disclosure of such information.

Public Resources Code section 21082.3 does not prevent a Lead Agency or other public agency from describing the information in general terms in the Negative Declaration or Mitigated Negative Declaration so as to inform the public of the basis of the Lead Agency's or other public agency's decision without breaching the confidentiality required. In addition, a Lead Agency may adopt a Mitigated Negative Declaration for a project with a significant impact on an identified tribal cultural resource only if one of the following occurs:

(a) The consultation process between the California Native American tribe and the Lead Agency has occurred as provided in Public Resources Code sections 21080.3.1 and 21080.3.2 and concluded pursuant to subdivision (b) of Section 21080.3.2.

(b) The California Native American tribe has requested consultation pursuant to Public Resources Code section 21080.3.1 and has failed to provide comments to the Lead agency, or otherwise failed to engage, in the consultation process.

(c) The Lead Agency has complied with subdivision (d) of Section 21080.3.1 of the Public Resources Code and the California Native American tribe has failed to request consultation within 30 days.

If substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource but the decision-makers do not include the mitigation measures recommended by the staff in the Mitigated Negative Declaration, or if there are no agreed upon mitigation measures at the conclusion of the consultation; or if no consultation has occurred, the Lead Agency must still consider the adoption of feasible mitigation.

(Reference: Pub. Resources Code, § 21082.3.)

6.09 SIGNIFICANT ADVERSE IMPACTS TO TRIBAL CULTURAL RESOURCES

Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. If the Lead Agency determines that a project may cause a substantial adverse change to a tribal cultural resource, and measures are not otherwise identified in the consultation process provided in Public Resources Code section 21080.3.2 and as set forth in Local Guidelines Section 6.07, the following examples of mitigation measures, if feasible, may be considered to avoid or minimize the significant adverse impacts:

(a) Avoidance and preservation of the resources in place, including, but not limited to, planning and construction to avoid the resources and protect the cultural and natural context, or planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.

(b) Treating the resource with culturally appropriate dignity taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:

(1) Protecting the cultural character and integrity of the resource.

(2) Protecting the traditional use of the resource.

(3) Protecting the confidentiality of the resource.

(c) Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.

(d) Protecting the resource.

(Reference: Pub. Resources Code, § 21084.3.)

6.10 POSTING AND PUBLICATION OF NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION.

The City shall have a copy of the Notice of Intent to Adopt, the Negative Declaration or Mitigated Negative Declaration, and the Initial Study posted at the City's offices and on the City's website, if any, and shall make these documents available for public inspection. The Notice must be provided either twenty (20) or thirty (30) days prior to final adoption of the Negative Declaration or Mitigated Negative Declaration. The public review period for a Negative

Declaration or Mitigated Negative Declaration prepared for a project subject to state agency review, as set forth in Local Guidelines Section 6.11 must be circulated for at least as long as the review period established by the State Clearinghouse, usually no less than thirty (30) days. Under certain circumstances, a shortened review period of at least twenty (20) days may be approved by the State Clearinghouse as provided for in State CEQA Guidelines section 15105. See the Shortened Review Request Form "P." The state review period will commence on the date the State Clearinghouse distributes the document to state agencies. The State Clearinghouse will distribute the document within three (3) days of receipt if the Negative Declaration or Mitigated Negative Declaration is deemed complete.

The Notice must also be posted in the office of the Clerk in each county in which the project is located and must remain posted throughout the public review period. The County Clerk is required to post the Notice within twenty-four (24) hours of receiving it.

Notice shall be provided as stated in Local Guidelines Section 6.04. In addition, Notice of the Intent to Adopt shall be given to the last known name and address of all organizations and individuals who have previously requested notice; by posting the notice on the website of the lead agency; and by at least one of the following procedures:

(a) Publication at least once in a newspaper of general circulation in the area affected by the proposed project. If more than one area will be affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas;
(b) Posting of notice on and off site in the area where the project is to be located; or
(c) Direct mailing to owners and occupants of property contiguous to the project, as shown on the latest equalized assessment roll.

The City, when acting as Lead Agency, shall consider all comments received during the public review period for the Negative Declaration or Mitigated Negative Declaration. For a Negative Declaration or Mitigated Negative Declaration, the City is not required to respond in writing to comments it receives either during or after the public review period. However, the City may provide a written response to all comments if it will not delay action on the Negative Declaration or Mitigated Negative Declaration, since any comment received prior to final action on the Negative Declaration or Mitigated Negative Declaration can form the basis of a legal challenge. A written response that refutes the comment or adequately explains the City's action in light of the comment will assist the City in defending against a legal challenge. The City shall notify any public agency that comments on a Negative Declaration or Mitigated Negative Declaration of the public hearing or hearings, if any, on the project for which the Negative Declaration or Mitigated Negative Declaration was prepared.

(Reference: Pub. Resources Code, § 21092; State CEQA Guidelines, §§ 15072-15073.)

6.11 SUBMISSION OF NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION TO STATE CLEARINGHOUSE.

A Negative Declaration or Mitigated Negative Declaration must be submitted to the State Clearinghouse, in an electronic form as required by the Office of Planning and Research, regardless

of whether the document must be circulated for review and comment by state agencies under State CEQA Guidelines section 15205 and 15206. The Negative Declaration or Mitigated Negative Declaration must be submitted via the Office of Planning and Research's CEQA Submit website (https://ceqasubmit.opr.ca.gov/Security/LogOn?ReturnUrl=%2f). The CEQA Submit website differentiates between environmental documents that do require review and comment by state agencies and those that do not. In particular, the website provides a "Local Review Period" tab for submitting documents that do not require review and comment by state agencies, and a "State Review Period" tab for submitting documents that do require review and comment by state agencies.

A Negative Declaration or Mitigated Negative Declaration must be submitted to the State Clearinghouse for review and comment by state agencies (i.e., a Negative Declaration or Mitigated Negative Declaration must be submitted through the CEQA Submit website under the "State Review Period" tab) in the following situations:

(a) The Negative Declaration or Mitigated Negative Declaration is prepared by a Lead Agency that is a state agency;
(b) The Negative Declaration or Mitigated Negative Declaration is prepared by a public agency where a state agency is a Responsible Agency, Trustee Agency, or otherwise has jurisdiction by law with respect to the project; or
(c) The Negative Declaration or Mitigated Negative Declaration is for a project identified in State CEQA Guidelines section 15206 as being of statewide, regional, or area-wide significance.

State CEQA Guidelines section 15206 identifies the following types of projects as being examples of projects of statewide, regional, or area-wide significance that require submission to the State Clearinghouse for circulation:

(1) Projects that have the potential to cause significant environmental effects beyond the city or county where the project would be located, such as:

    (a) Residential development of more than 500 units;
    (b) Commercial projects employing more than 1,000 persons or covering more than 500,000 square feet of floor space;
    (c) Office building projects employing more than 1,000 persons or covering more than 250,000 square feet of floor space;
    (d) Hotel or motel development of more than 500 rooms; or
    (e) Industrial projects housing more than 1,000 persons, occupying more than 40 acres of land, or covering more than 650,000 square feet of floor area;

(2) Projects for the cancellation of a Williamson Act contract covering 100 or more acres;

(3) Projects in one of the following Environmentally Sensitive Areas:

    (a) Lake Tahoe Basin;
    (b) Santa Monica Mountains Zone;
    (c) Sacramento-San Joaquin River Delta;

(d) Suisun Marsh;
(e) Coastal Zone, as defined by the California Coastal Act;
(f) Areas within one-quarter mile of a river designated as wild and scenic; or
(g) Areas within the jurisdiction of the San Francisco Bay Conservation and Development Commission;

(4) Projects that would affect sensitive wildlife habitats or the habitats of any rare, threatened, or endangered species;

(5) Projects that would interfere with water quality standards; and

(6) Projects that would provide housing, jobs, or occupancy for 500 or more people within 10 miles of a nuclear power plant.

A Negative Declaration or Mitigated Negative Declaration may also be submitted to the State Clearinghouse for circulation if a state agency has special expertise with regard to the environmental impacts involved.

The public review period for a Negative Declaration or a Mitigated Negative Declaration shall not be less than twenty (20) days. The review period, however, shall be at least thirty (30) days if the Negative Declaration or Mitigated Negative Declaration is for a proposed project where a state agency is the lead agency, a responsible agency, or a trustee agency; a state agency otherwise has jurisdiction by law with respect to the project; or the proposed project is of sufficient statewide, regional, or areawide significance as determined pursuant to the guidelines certified and adopted pursuant to State CEQA Guidelines section 15206. When the Negative Declaration or Mitigated Negative Declaration is submitted to the State Clearinghouse for review, the review period begins (day one) on the date that the State Clearinghouse distributes the Negative Declaration or Mitigated Negative Declaration to state agencies. The State Clearinghouse is required to distribute the Negative Declaration or Mitigated Negative Declaration to state agencies within three (3) working days from the date the State Clearinghouse receives the document, as long as the Negative Declaration or Mitigated Negative Declaration is complete when submitted to the State Clearinghouse. If the document submitted to the State Clearinghouse is not complete, the State Clearinghouse must notify the Lead Agency. The review period for the public and all other agencies may run concurrently with the state agency review period established by the State Clearinghouse, but the public review period cannot conclude before the state agency review period does. The review period for the public shall be at least as long as the review period established by the State Clearinghouse.

A shorter review period by the State Clearinghouse for a Negative Declaration or Mitigated Negative Declaration can be requested by the decision-making body. The shortened review period shall not be less than twenty (20) days. Such a request must be made in writing by the Lead Agency to the Office of Planning and Research. The decision-making body may designate by resolution or ordinance an individual authorized to request a shorter review period. (See Form "P"). Any approval of a shortened review period must be given prior to, and reflected in, the public notice. However, a shortened review period shall not be approved by the Office of Planning and Research for any proposed project of statewide, regional or area-wide environmental significance, as defined by State CEQA Guidelines section 15206.

When the Lead Agency completes its Negative Declaration or Mitigated Negative Declaration for a proposed project, the Lead Agency must also cause a Notice of Completion (Form "H") to be filed with the Office of Planning and Research via the Office of Planning and Research's CEQA Submit website. The Notice of Completion should briefly identify the project, indicate that an environmental document has been prepared for the project, and identify the project location by latitude and longitude.

The Lead Agency must post the Notice of Intent, Notice of Completion, and Negative Declaration or Mitigated Negative Declaration on its website, if any.

(Reference: Pub. Resources Code, §§ 21082.1, 21161; State CEQA Guidelines, §§ 15205, 15206.)

6.12 SPECIAL NOTICE REQUIREMENTS FOR WASTE- AND FUEL-BURNING PROJECTS.

For any project that involves the burning of municipal waste, hazardous waste, or refuse-derived fuel (such as tires) and that does not require an EIR, as defined in Local Guidelines Section 5.11, a Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration shall be given to all organizations and individuals who have previously requested it and shall also be given by all three of the procedures listed in Local Guidelines Section 6.07. In addition, Notice shall be given by direct mailing to the owners and occupants of property within one-quarter mile of any parcel or parcels on which such a project is located. (Public Resources Code section 21092(c).)

These notice requirements apply only to those projects described in Local Guidelines Section 5.11. These notice requirements do not preclude the City from providing additional notice by other means if desired.

(Reference: Pub. Resources Code, § 21092(c).)

6.13 CONSULTATION WITH WATER AGENCIES REGARDING LARGE DEVELOPMENT PROJECTS.

Under specific circumstances a city or county acting as Lead Agency must consult with the public water system that will supply the project to determine whether the public water system can adequately supply the water needed for the project. As a Responsible Agency, the City should be aware of these requirements. See Local Guidelines Section 5.16 for more information on these requirements.

(Reference: State CEQA Guidelines, § 15155.)

6.14 CONTENT OF NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION.

A Negative Declaration must be prepared directly by or under contract to the City and should generally resemble Form "E." It shall contain the following information:

(a) A brief description of the project proposed, including any commonly used name for the project;
(b) The location of the project and the name of the project proponent;

(c) A finding that the project as proposed will not have a significant effect on the environment; and
(d) An attached copy of the Initial Study documenting reasons to support the finding.

For a Mitigated Negative Declaration, feasible mitigation measures included in the project to substantially lessen or avoid potentially significant effects must be fully enforceable through permit conditions, agreements, or other measures. Such permit conditions, agreements, and measures must be consistent with applicable constitutional requirements such as the "nexus" and "rough proportionality" standards established by case law.

The proposed Negative Declaration or Mitigated Negative Declaration must reflect the independent judgment of the City.

(Reference: State CEQA Guidelines, § 15071.)

6.15 TYPES OF MITIGATION.

The following is a non-exhaustive list of potential types of mitigation the City may consider:

(a) Avoidance;
(b) Preservation;
(c) Rehabilitation or replacement. Replacement may be on-site or off-site depending on the particular circumstances; and/or
(d) Participation in a fee program.

(Reference: State CEQA Guidelines, § 15370.)

6.16 ADOPTION OF NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION.

Following the publication, posting or mailing of the Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration, but not before the expiration of the applicable twenty (20) or thirty (30) day public review period, the Negative Declaration or Mitigated Negative Declaration may be presented to the decision-making body at a regular or special meeting. Prior to adoption, the City shall independently review and analyze the Negative Declaration or Mitigated Negative Declaration and find that the Negative Declaration or Mitigated Negative Declaration reflects the independent judgment of the City.

If new information is added to the Negative Declaration or Mitigated Negative Declaration after public review, the City should determine whether recirculation is warranted. (See Local Guidelines Section 6.19). If the decision-making body finds that the project will not have a significant effect on the environment, it shall adopt the Negative Declaration or Mitigated Negative Declaration. If the decision-making body finds that the proposed project may have a significant effect on the environment that cannot be mitigated or avoided, it shall order the preparation of a Draft EIR and the filing of a Notice of Preparation of a Draft EIR.

When adopting a Negative Declaration or Mitigated Negative Declaration, the City shall specify the location and custodian of the documents or other material that constitute the record of

proceedings upon which it based its decision. If adopting a Negative Declaration for a project that may emit hazardous air emissions within one-quarter mile of a school and that meets the other requirements of Local Guidelines Section 6.06, the decision-making body must also make the findings required by Local Guidelines Section 6.06.

As Lead Agency, the City may charge a non-elected official or body with the responsibility of independently reviewing the adequacy of and adopting a Negative Declaration or a Mitigated Negative Declaration. Any final CEQA determination made by a non-elected decisionmaker, however, is appealable to the City Council within either (a) the time period set forth in the City's established process to appeal the non-elected decisionmaker's CEQA determination; or, if no such process exists, (2) ten (10) days of the non-elected decisionmaker's determination. If the non-elected decisionmaker's CEQA determination is not timely appealed as set forth herein, the non-elected decisionmaker's determination shall be final.

(Reference: State CEQA Guidelines, § 15074.)

6.17 MITIGATION REPORTING OR MONITORING PROGRAM FOR MITIGATED NEGATIVE DECLARATION.

When adopting a Mitigated Negative Declaration pursuant to Local Guidelines Section 6.13, the City shall adopt a reporting or monitoring program to assure that mitigation measures, which are required to mitigate or avoid significant effects on the environment, will be fully enforceable through permit conditions, agreements, or other measures and implemented by the project proponent or other responsible party in a timely manner, in accordance with conditions of project approval. The City shall also specify the location and the custodian of the documents that constitute the record of proceedings upon which it based its decision. There is no requirement that the reporting or monitoring program be circulated for public review; however, the City may choose to circulate it for public comments along with the Mitigated Negative Declaration. The mitigation measures required to mitigate or avoid significant effects on the environment must be adopted as conditions of project approval.

This reporting or monitoring program shall be designed to assure compliance during the implementation or construction of a project and shall otherwise comply with the requirements described in Local Guidelines Section 7.38. If a Responsible Agency or Trustee Agency has required that certain conditions be incorporated into the project, the City may request that agency to prepare and submit a proposed reporting or monitoring program. The City shall also require that, prior to the close of the public review period for a Mitigated Negative Declaration (see Local Guidelines Section 6.04), the Responsible or Trustee Agency submit detailed performance objectives for mitigation measures, or refer the City to appropriate, readily available guidelines or reference documents. Any mitigation measures submitted to the City by a Responsible or Trustee Agency shall be limited to measures that mitigate impacts to resources that are within the Responsible or Trustee Agency's authority.

Local agencies have the authority to levy fees sufficient to pay for this program. Therefore, the City can charge the project proponent a fee to cover actual costs of program processing and implementation.

Transportation information resulting from the reporting or monitoring program required to be adopted by the City shall be submitted to the regional transportation planning agency where the project is located and to the Department of Transportation for a project of statewide, regional or area-wide significance according to State CEQA Guidelines section 15206. The transportation planning agency and the Department of Transportation are required by law to adopt guidelines for the submittal of these reporting or monitoring programs, so the City may wish to tailor its submittal to such guidelines.

(Reference: State CEQA Guidelines, §§ 15074, 15097.)

6.18 APPROVAL OR DISAPPROVAL OF PROJECT.

At the time of adoption of a Negative Declaration or Mitigated Negative Declaration, the decision-making body may consider the project for purposes of approval or disapproval. Prior to approving the project, the decision-making body shall consider the Negative Declaration or Mitigated Negative Declaration, together with any written comments received and considered during the public review period, and shall approve or disapprove the Negative Declaration or Mitigated Negative Declaration. In making a finding as to whether there is any substantial evidence that the project will have a significant effect on the environment, the factors listed in Local Guidelines Section 5.08 should be considered. (See Local Guidelines Section 6.06 for approval requirements for facilities that may emit hazardous pollutants or that may handle extremely hazardous substances within one-quarter mile of a school site.)

(Reference: State CEQA Guidelines, § 15092.)

6.19 RECIRCULATION OF A NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION.

A Negative Declaration or Mitigated Negative Declaration must be recirculated when the document must be substantially revised after the public review period but prior to its adoption. A "substantial revision" occurs when the City has identified a new and avoidable significant effect for which mitigation measures or project revisions must be added in order to reduce the effect to a level of insignificance, or when the City determines that the proposed mitigation measures or project revisions will not reduce the potential effects to less than significant and new measures or revisions must be required.

Recirculation is not required under the following circumstances:

(a) Mitigation measures are replaced with equal or more effective measures, and the City makes a finding to that effect;
(b) New project revisions are added after circulation of the Negative Declaration or Mitigated Negative Declaration or in response to written or oral comments on the project's effects, but the revisions do not create new significant environmental effects and are not necessary to mitigate an avoidable significant effect;
(c) Measures or conditions of project approval are added after circulation of the Negative Declaration or Mitigated Negative Declaration, but the measures or conditions are not required by CEQA, do not create new significant environmental effects, and are not necessary to mitigate an avoidable significant effect; or

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(d) New information is added to the Negative Declaration or Mitigated Declaration which merely clarifies, amplifies, or makes insignificant modifications to the Negative Declaration or Mitigated Negative Declaration.

If, after preparation of a Negative Declaration or Mitigated Negative Declaration, the City determines that the project requires an EIR, it shall prepare and circulate the Draft EIR for consultation and review and advise reviewers in writing that a proposed Negative Declaration or Mitigated Declaration had previously been circulated for the project.

(Reference: State CEQA Guidelines, § 15073.5.)

6.20 NOTICE OF DETERMINATION ON A PROJECT FOR WHICH A PROPOSED NEGATIVE OR MITIGATED NEGATIVE DECLARATION HAS BEEN APPROVED.

After final approval of a project for which a Negative Declaration or Mitigated Negative Declaration has been prepared, Staff shall cause to be prepared, filed, and posted a Notice of Determination (Form "F"). The Notice of Determination shall contain the following information:

(a) An identification of the project, including the project title as identified on the proposed Negative Declaration or Mitigated Negative Declaration, location, and the State Clearinghouse identification number for the proposed Negative Declaration or Mitigated Negative Declaration if the Notice of Determination is filed with the State Clearinghouse;
(b) For private projects, identification of the person undertaking a project that is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies or the identity of the person receiving a lease, permit, license, certificate, or other entitlement for use from one or more public agencies;
(c) A brief description of the project;
(d) The name of the City and the date on which the City approved the project;
(e) The determination of the City that the project will not have a significant effect on the environment;
(f) A statement that a Negative Declaration or Mitigated Negative Declaration was adopted pursuant to the provisions of CEQA;
(g) A statement indicating whether mitigation measures were made a condition of the approval of the project, and whether a mitigation monitoring plan/program was adopted; and
(h) The address where a copy of the Negative Declaration or Mitigated Negative Declaration may be examined.

The Notice of Determination shall be filed within five (5) working days of project approval with both (1) the Clerk of each county in which the project will be located; and (2) the State Clearinghouse in the OPR.

The City must also post the Notice of Determination on its website. Such electronic notice is in addition to the posting requirements of the State CEQA Guidelines and the Public Resources Code. The Clerk must post the Notice of Determination within twenty-four (24) hours of receipt. The Notice must be posted in the office of the Clerk for a minimum of thirty (30) days. Thereafter, the Clerk shall return the notice to the City with a notation of the period it was posted. The City shall retain the notice for not less than twelve (12) months.

For projects with more than one phase, Staff shall file a Notice of Determination for each phase requiring a discretionary approval.

The filing and posting of the Notice of Determination with the County Clerk, usually starts a thirty (30) day statute of limitations on court challenges to the approval under CEQA. When separate notices are filed for successive phases of the same overall project, the thirty (30) day statute of limitations to challenge the subsequent phase begins to run when the subsequent notice is filed. Failure to file the Notice may result in a one hundred eighty (180) day statute of limitations.

(Reference: State CEQA Guidelines, § 15075.)

6.21 ADDENDUM TO NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION.

The City may prepare an addendum to an adopted Negative Declaration or Mitigated Negative Declaration if only minor technical changes or additions are necessary. The City may also prepare an addendum to an adopted Negative Declaration or Mitigated Negative Declaration when none of the conditions calling for a subsequent Negative Declaration or Mitigated Negative Declaration have occurred. (See Local Guidelines Section 6.22 below.) An addendum need not be circulated for public review but can be attached to the adopted Negative Declaration or Mitigated Negative Declaration. The City shall consider the addendum with the adopted Negative Declaration or Mitigated Negative Declaration prior to project approval.

(Reference: State CEQA Guidelines, § 15164.)

6.22 SUBSEQUENT NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION.

When a Negative Declaration or Mitigated Negative Declaration has been adopted for a project, or when an EIR has been certified, no subsequent Negative Declaration, Mitigated Negative Declaration, or EIR shall be prepared for that project unless the Lead Agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

(a) Substantial changes are proposed in the project which will require major revisions of the previous EIR, Negative Declaration, or Mitigated Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(b) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR, Negative Declaration, or Mitigated Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(c) New information of substantial importance which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified or the Negative Declaration was adopted which shows any of the following:

    (1) The project will have one or more significant effects not discussed in the previous EIR or Negative Declaration;

(2) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(3) Mitigation measure(s) or alternative(s) previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents declined to adopt the mitigation measure(s) or alternative(s); or

(4) Mitigation measure(s) or alternative(s) which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure(s) or alternative(s).

The City, as Lead Agency, would then determine whether a Subsequent EIR, Supplemental EIR, Subsequent Negative Declaration, Subsequent Mitigated Negative Declaration, or Addendum would be applicable. Subsequent Negative Declarations and Mitigated Negative Declarations must be given the same notice and public review period as other Negative Declarations. The Subsequent Negative Declaration shall state where the previous document is available and can be reviewed.

(Reference: State CEQA Guidelines, § 15162.)

6.23 PRIVATE PROJECT COSTS.

For private projects, the person or entity proposing to carry out the project shall bear all costs incurred by the City in preparing the Initial Study and in preparing and filing the Negative Declaration or Mitigated Negative Declaration and Notice of Determination.

6.24 FILING FEES FOR PROJECTS THAT AFFECT WILDLIFE RESOURCES.

At the time a Notice of Determination for a Negative Declaration or Mitigated Negative Declaration is filed with the County or Counties in which the project is located, a fee of $2,916.75, or the then applicable fee, shall be paid to the Clerk for projects that will adversely affect fish or wildlife resources. These fees are collected by the Clerk on behalf of DFW pursuant to Fish and Game Code section 711.4.

Only one filing fee is required for each project unless the project is tiered or phased and separate environmental documents are prepared. (Fish & Game Code section 711.4(g).) For projects where Responsible Agencies file separate Notices of Determination, only the Lead Agency is required to pay the fee.

Note: County Clerks are authorized to charge a documentary handling fee for each project in addition to the Fish and Game Code fees specified above. Refer to the Index in the Staff Summary to help determine the correct total amount of fees applicable to the project.

For private projects, the City may pass these costs on to the project applicant.

Fish and Game Code fees may be waived for projects with "no effect" on fish or wildlife resources or for certain projects undertaken by the DFW and implemented through a contract with a non-profit entity or local government agency; however, the Lead Agency must obtain a form showing that the DFW has determined that the project will have "no effect" on fish and wildlife. (Fish and Game Code section 711.4(c)(2)(A)). Projects that are statutorily or categorically exempt from CEQA are also not subject to the filing fee, and do not require a no effect determination. (State CEQA Guidelines sections 15260 through 15333; Fish and Game Code section 711.4(d)(1)). The applicable DFW Regional Office's environmental review and permitting staff are responsible for determining whether a project within their region will qualify for a no effect determination and if the CEQA filing fee will be waived.

The request should be submitted when the CEQA document is released for public review, or as early as possible in the public comment period. Documents submitted in digital format are preferred (e.g. compact disk). If insufficient documentation is submitted to DFW for the proposed project, a no effect determination will not be issued.

If the City believes that a project for which it is Lead Agency will have "no effect" on fish or wildlife resources, it should contact the appropriate DFW Regional Office. The project's CEQA document may need to be provided to the appropriate DFW Regional Office along with a written request. Documentation submitted to the appropriate DFW Regional Office should set forth facts in support of the fee exemption. Previous examples of projects that have qualified for a fee exemption include: minor zoning changes that did not lead to or allow new construction, grading, or other physical alterations to the environment; and minor modifications to existing structures, including addition of a second story to single or multi-family residences.

The fee exemption requirement that the project have "no" impact on fish or wildlife resources is more stringent than the former requirement that a project have only "de minimis" effects on fish or wildlife resources. DFW may determine that a project would have no effect on fish and wildlife if all of the following conditions apply:

- The project would not result in or have the potential to result in harm, harassment, or take of any fish and/or wildlife species.

- The project would not result in or have the potential to result in direct or indirect destruction, ground disturbance, or other modification of any habitat that may support fish and/or wildlife species.

- The project would not result in or have the potential to result in the removal of vegetation with potential to support wildlife.

- The project would not result in or have the potential to result in noise, vibration, dust, light, pollution, or an alteration in water quality that may affect fish and/or wildlife directly or from a distance.

- The project would not result in or have the potential to result in any interference with the movement of any fish and/or wildlife species.

Any request for a fee exemption should include the following information:

(1) the name and address of the project proponent and applicant contact information;

(2) a brief description of the project and its location;

(3) site description and aerial and/or topographic map of the project site;

(4) State Clearinghouse number or county filing number;

(5) a statement that an Initial Study has been prepared by the City to evaluate the project's effects on fish and wildlife resources, if any; and

(6) a declaration that, based on the City's evaluation of potential adverse effects on fish and wildlife resources, the City believes the project will have no effect on fish or wildlife.

If insufficient documentation is submitted to DFW for the proposed project, a no effect determination will not be issued. (A sample Request for Fee Exemption is attached as Form "L".) DFW will review the City's finding, and if DFW agrees with the City's conclusions, DFW will provide the City with written confirmation. The City should retain DFW's determination as part of the administrative record; the City is required to file a copy of this determination with the County after project approval and at the time of filing of the Notice of Determination.

The City must have written confirmation of DFW's finding of "no impact" at the time the City files its Notice of Determination with the County. The County cannot accept the Notice of Determination unless it is accompanied by the appropriate fee or a written no effect determination from DFW.

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7. ENVIRONMENTAL IMPACT REPORT

7.01 DECISION TO PREPARE AN EIR.

An EIR shall be prepared whenever there is substantial evidence in light of the whole record which supports a fair argument that the project may have a significant effect on the environment. (See Local Guidelines Sections 11.65 and 11.71.) The record may include the Initial Study or other documents or studies prepared to assess the project's environmental impacts.

(Reference: Pub. Resources Code, § 21151.)

7.02 CONTRACTING FOR PREPARATION OF EIRS.

If an EIR is prepared under a contract with the City, the contract must be executed within forty-five (45) days from the date on which the City sends a Notice of Preparation. The City may take longer to execute the contract if the project applicant and the City mutually agree to an extension of the 45-day time limit. (Reference: Pub. Resources Code, § 21151.5.)

The EIR prepared under contract must be the City's product. Staff, together with such consultant help as may be required, shall independently review and analyze the EIR to verify its accuracy, objectivity and completeness prior to presenting it to the decision-making body. The EIR made available for public review must reflect the independent judgment of the City. Staff may require such information and data from the person or entity proposing to carry out the project as Staff deems necessary for completion of the EIR. Reference: State CEQA Guidelines, §§ 15084, 15090.)

7.03 NOTICE OF PREPARATION OF DRAFT EIR.

After determining that an EIR will be required for a proposed project, the Lead Agency shall prepare and submit a Notice of Preparation (Form "G") to the Office of Planning and Research through its CEQA Submit website and to each of the following:

(a) Each Responsible Agency and Trustee Agency involved with the project;
(b) Any other federal, state, or local agency which has jurisdiction by law or exercises authority over resources affected by the project, including:

(1) Any water supply agency consulted under Local Guidelines Section 5.16;

(2) Any city or county bordering on the project area;

(3) For a project of statewide, regional, or area-wide significance, to any transportation agencies or public agencies which have major local arterials or public transit facilities within five (5) miles of the project site or freeways, highways, or rail transit service within ten (10) miles of the project site which could be affected by the project; and

(4) For a subdivision project located within one mile of a facility of the State Water Resources Development System, the California Department of Water Resources;

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(c) The last known name and address of all organizations and individuals who have previously filed a written request with the City to receive these Notices;
(d) For certain projects that may impact a low-level flight path, military impact zone, or special use airspace and that meet the other criteria in Local Guidelines Section 7.04, the specified military services contact;
(e) For certain projects that involve the construction or alteration of a facility anticipated to emit hazardous air emissions or handle hazardous substances within one-quarter mile of a school and that meet the other requirements of Local Guidelines Section 7.36, any potentially affected school district;
(f) For certain waste-burning projects that meet the requirements of Local Guidelines Section 5.11 (See also Local Guidelines Section 7.27), the owners and occupants of property within one-fourth mile of any parcel on which the project will be located; and
(g) For a project that establishes or amends a redevelopment plan that contains land in agricultural use, the agricultural and farm agencies and organizations specified in Health and Safety Code section 33333.3.

Additionally, for a project of statewide, regional, or area-wide significance, the Lead Agency should also consult with public transit agencies with facilities within one-half mile of the proposed project.

The Notice of Preparation must also be filed and posted in the office of the Clerk in each county in which the project is located for thirty (30) days. The County Clerk must post the Notice within twenty-four (24) hours of receipt.

When submitting the Notice of Preparation to OPR, a Notice of Completion (Form "H") should be used as a cover sheet. Responsible and Trustee Agencies, the State Clearinghouse, and the state agencies contacted by the State Clearinghouse have thirty (30) days to respond to the Notice of Preparation in writing via certified mail, email, or an equivalent procedure. Agencies that do not respond within thirty (30) days shall be deemed not to have any comments on the Notice of Preparation.

At a minimum, the Notice of Preparation shall include:

(a) A description of the project;
(b) The location of the project indicated either on an attached map (preferably a copy of the USGS 15' or 7½' topographical map identified by quadrangle name) or by a street address and cross street in an urbanized area;
(c) The probable environmental effects of the project;
(d) The name and address of the consulting firm retained to prepare the Draft EIR, if applicable; and
(e) The Environmental Protection Agency ("EPA") list on which the proposed site is located, if applicable, and the corresponding information from the applicant's statement. (See Local Guidelines Section 2.05.)

(Reference: Pub. Resources Code, § 21080.4; State CEQA Guidelines, § 15082.)

7.04 SPECIAL NOTICE REQUIREMENTS FOR AFFECTED MILITARY AGENCIES

CEQA imposes additional requirements to provide notice to potentially affected military agencies when:

(a) A "military service" (defined in Section 11.42 of these Local Guidelines) has provided the City with its contact office and address and notified the City of the specific boundaries of a "low-level flight path" (defined in Section 11.37 of these Local Guidelines), "military impact zone" (defined in Section 11.41 of these Local Guidelines), or "special use airspace" (defined in Section 11.67 of these Local Guidelines); and

(b) The project meets one of the following criteria:

(1) The project is within the boundaries specified pursuant to subsection (a) of this guideline;

(2) The project includes a general plan amendment;

(3) The project is of statewide, regional, or area-wide significance; or

(4) The project relates to a public use airport or certain lands surrounding a public use airport.

When a project meets these requirements, the City must provide the military service's designated contact with any Notice of Preparation, and/or Notice of Availability of Draft EIRs that have been prepared for a project, unless the project involves the remediation of lands contaminated with hazardous wastes and meets certain other requirements. (See Public Resources Code sections 21080.4 and 21092 and Health and Safety Code sections 25300, et seq.; 25396; and 25187.)

The City must provide the military service with sufficient notice of its intent to certify an EIR to ensure that the military service has no fewer than thirty (30) days to review the document; or forty-five (45) days to review the environmental documents before they are approved if the documents have been submitted to the State Clearinghouse.

It should be noted that the effect, or potential effect, a project may have on military activities does not itself constitute an adverse effect on the environment pursuant to CEQA.

(Reference: Pub. Resources Code, §§ 21080.4, 21092; Health & Safety Code, §§ 25300, et seq., 25396, 25187; State CEQA Guidelines, § 15082(a).)

7.05 ENVIRONMENTAL LEADERSHIP DEVELOPMENT PROJECT.

Under certain circumstances, a project applicant may choose to apply to the Governor of the State of California to have the project certified as an Environmental Leadership Development Project. A project may qualify as an Environmental Leadership Development Project if it is one of the following:

(1) A residential, retail, commercial, sports, cultural, entertainment, or recreational use project that meets the following standards:

- The project is certified as Leadership in Energy and Environmental Design (LEED) gold or better by the United States Green Building Council; and

- The project, where applicable, achieves a 15 percent greater standard for transportation efficiency than comparable projects; and

- The project is located on an infill site; and

- For a project that is within a metropolitan planning organization for which a sustainable communities strategy or alternative planning strategy is in effect, the infill project shall be consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy, for which the State Air Resources Board has accepted a metropolitan planning organization's determination, under subparagraph (H) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code, that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets.

(2) A clean renewable energy project that generates electricity exclusively through wind or solar, but not including waste incineration or conversion.

(3) A clean energy manufacturing project that manufactures products, equipment, or components used for renewable energy generation, energy efficiency, or for the production of clean alternative fuel vehicles.

(4) A housing development project—i.e., a project that entails either residential units only; mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use; or transitional housing or supportive housing—that meets all of the following conditions:

- The housing development project is located on an infill site.

- For a housing development project that is located within a metropolitan planning organization for which a sustainable communities strategy or alternative planning strategy is in effect, the project is consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy, for which the State Air Resources Board has accepted a metropolitan planning organization's determination, under subparagraph (H) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code, that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets.

- Notwithstanding paragraph (1) of subdivision (a) of Section 21183, the housing development project will result in a minimum investment of fifteen million

dollars ($15,000,000), but less than one hundred million dollars ($100,000,000), in California upon completion of construction.

- At least 15 percent of the housing development project is dedicated as housing that is affordable to lower income households, as defined in Section 50079.5 of the Health and Safety Code. Upon completion of a housing development project that is qualified under this paragraph and is certified by the Governor, the lead agency or applicant of the project shall notify the Office of Planning and Research of the number of housing units and affordable housing units established by the project. Notwithstanding the foregoing, if a local agency has adopted an inclusionary zoning ordinance that establishes a minimum percentage for affordable housing within the jurisdiction in which the housing development project is located that is higher than 15 percent, the percentage specified in the inclusionary zoning ordinance shall be the threshold for affordable housing.

- Except for use as a residential hotel, as defined in Section 50519 of the Health and Safety Code, no part of the housing development project shall be used for a rental unit for a term shorter than 30 days, or designated for hotel, motel, bed and breakfast inn, or other transient lodging use. Moreover, no part of the housing development project shall be used for manufacturing or industrial uses.

The Governor may certify a leadership project for streamlining before the lead agency certifies an EIR for the project if various conditions set forth in Public Resources Code section 21182 are met. The conditions include but are not limited to the following: (1) except as set forth above, the project will result in a minimum investment of one hundred million dollars ($100,000,000) in California upon completion of construction; (2) the project creates high-wage, highly skilled jobs that pay prevailing wages and living wages, provide construction jobs and permanent jobs for Californians, helps reduce unemployment, and promotes apprenticeship training; and (3) the project will not result in any net additional emission of greenhouse gases, including greenhouse gas emissions from employee transportation.

If the Governor certifies a project as an Environmental Leadership Development Project, any lawsuit challenging the project—including any potential appeals to the court of appeal or the California Supreme Court—must be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the trial court.

This section shall remain in effect until January 1, 2026. This section does not comprehensively set forth the rules governing Environmental Leadership Development projects. For more information, please see Chapter 6.5 of the Public Resources Code, starting with Public Resources Code section 21178.

7.06 PREPARATION OF DRAFT EIR.

The Lead Agency is responsible for preparing a Draft EIR. The Lead Agency may begin preparation of the Draft EIR without awaiting responses to the Notice of Preparation. However,

information communicated to the Lead Agency not later than thirty (30) days after receipt of the Notice of Preparation shall be included in the Draft EIR.

(Reference: State CEQA Guidelines, § 15084.)

7.07 CONSULTATION WITH CALIFORNIA NATIVE AMERICAN TRIBES.

Prior to the release of a Draft EIR for a project, the Lead Agency shall begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project if:

(a) The California Native American tribe requested to the Lead Agency, in writing, to be informed by the Lead Agency through formal notification of proposed projects in the geographic area that is traditionally and culturally affiliated with the tribe; and

(b) The California Native American tribe responds, in writing, within 30 days of receipt of the formal notification, and requests the consultation. The California Native American tribe shall designate a lead contact person when responding to the Lead Agency. If a lead contact is not designated by the California Native American tribe, or if it designates multiple lead contact people, the Lead Agency shall defer to the individuals listed on the contact list maintained by the Native American Heritage Commission. Consultation is defined in Local Guidelines Section 11.12.

To expedite the requirements of this section, the Native American Heritage Commission shall assist the Lead Agency in identifying the California American Native tribes that are traditionally and culturally affiliated with the project area.

Within 14 days of determining that an application for a project is complete or a decision by a public agency to undertake a project, the Lead Agency shall provide formal notification to the designated contact of, or a trial representative of, traditionally and culturally affiliated California Native America tribes that have requested notice, which shall be accomplished by at least one written notification that includes a brief description of the proposed project and its location, the Lead Agency contact information, and a notification that the California Native American tribe has 30 days to request consultation.

The Lead Agency shall begin the consultation process within 30 days of receiving a California Native American tribe's request for consultation.

If consultation is requested, the parties may propose mitigation measures, including those set forth in Public Resources Code section 21084.3, capable of avoiding or substantially lessening potential significant impacts to a tribal cultural resource or alternatives that would avoid significant impacts to a tribal cultural resource. The consultation may include discussion concerning the type of environmental review necessary, the significance of tribal cultural resources, the significance of the project's impacts on the tribal cultural resources, and, if necessary, project alternatives or the appropriate measures for preservation or mitigation that the California Native American tribe may recommend to the lead agency.

The consultation shall be considered concluded when either of the following occurs:

(1) The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource.

(2) A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached.

The California Native American tribe is not limited in its ability to submit information to the Lead Agency regarding the significance of the tribal cultural resources, the significance of the project's impact on tribal cultural resources, or any appropriate measures to mitigate the impacts. Additionally, the Lead Agency or project proponent is not limited in its ability to incorporate changes and additions to the project as a result of the consultation, even if not legally required.

(Reference: Pub. Resources Code, §§ 21080.3.1, 21080.3.2.)

7.08 IDENTIFICATION OF TRIBAL CULTURAL RESOURCES AND PROCESSING OF INFORMATION AFTER CONSULTATION WITH THE CALIFORNIA NATIVE AMERICAN TRIBE

After consultation with the California Native American tribe listed above in Local Guidelines Section 7.07, any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code section 21080.3.2 shall be recommended for inclusion in the EIR and in an adopted mitigation monitoring and reporting program, if the mitigation measures are determined to avoid or lessen the proposed project's impacts on tribal cultural resources, and if the mitigation measures are enforceable.

If a project may have a significant impact on a tribal cultural resource, the Lead Agency's EIR shall discuss both of the following:

(a) Whether the proposed project has a significant impact on an identified tribal cultural resource;

(b) Whether feasible alternatives or mitigation measures, including those measures that may be agreed to during the consultation, avoid or substantially lessen the impact on the identified tribal cultural resource.

Any information provided regarding the location, description and use of the tribal cultural resource that is submitted by a California Native American tribe during the environmental review process shall not be included in the EIR or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code section 7927.005 and State CEQA Guidelines section 15120(d), without the prior consent of the tribe that provided the information. If the Lead Agency publishes any information submitted by a California Native American tribe during the consultation or environmental review process, that information shall be published in a confidential appendix to the EIR unless the tribe provides consent, in writing, to the disclosure of some or all of the information to the public. This does not prohibit the confidential exchange of the submitted information between public agencies that have lawful jurisdiction over the preparation of the EIR.

The exchange of confidential information regarding tribal cultural resources submitted by a California Native American tribe during the consultation or environmental review process among the Lead Agency, the California Native American tribe, the project applicant, or the project applicant's agent is not prohibited by Public Resources Code section 21082.3. The project applicant and the project applicant's legal advisers must use a reasonable degree of care and maintain the confidentiality of the information exchanged for the purposes of preventing looting, vandalism, or damage to tribal cultural resources and shall not disclose to a third party confidential information regarding the cultural resource unless the California Native American tribe providing the information consents in writing to the public disclosure of such information.

Public Resources Code section 21082.3 does not prevent a Lead Agency or other public agency from describing the information in general terms in the EIR so as to inform the public of the basis of the Lead Agency's or other public agency's decision without breaching the confidentiality required. In addition, a Lead Agency may certify an EIR for a project with a significant impact on an identified tribal cultural resource only if one of the following occurs:

(a) The consultation process between the California Native American tribe and the Lead Agency has occurred as provided in Public Resources Code sections 21080.3.1 and 21080.3.2 and concluded pursuant to subdivision (b) of Section 21080.3.2.

(b) The California Native American tribe has requested consultation pursuant to Public Resources Code section 21080.3.1 and has failed to provide comments to the Lead Agency, or otherwise failed to engage, in the consultation process.

(c) The Lead Agency has complied with subdivision (d) of Section 21080.3.1 of the Public Resources Code and the California Native American tribe has failed to request consultation within 30 days.

If substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource but the decision-makers do not include the mitigation measures recommended by the staff in the Draft EIR, or if there are no agreed upon mitigation measures at the conclusion of the consultation, or if no consultation has occurred, the Lead Agency must still consider the adoption of feasible mitigation.

(Reference: Pub. Resources Code, § 21082.3.)

7.09 SIGNIFICANT ADVERSE IMPACTS TO TRIBAL CULTURAL RESOURCES

Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. If the Lead Agency determines that a project may cause a substantial adverse change to a tribal cultural resource, and measures are not otherwise identified in the consultation process provided in Public Resources Code section 21080.3.2 as set forth in Local Guidelines Section 7.07, the following examples of mitigation measures, if feasible, may be considered to avoid or minimize the significant adverse impacts:

(a) Avoidance and preservation of the resources in place, including, but not limited to, planning and construction to avoid the resources and protect the cultural and natural

context, or planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.

(b) Treating the resource with culturally appropriate dignity taking into account the tribal cultural values and meaning of the resource, including, but not limited to the following:

(1) Protecting the cultural character and integrity of the resource.

(2) Protecting the traditional use of the resource.

(3) Protecting the confidentiality of the resource.

(c) Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.

(d) Protecting the resource.

(Reference: Pub. Resources Code, § 21084.3.)

7.10 CONSULTATION WITH OTHER AGENCIES AND PERSONS.

To expedite consultation in response to the Notice of Preparation, the Lead Agency, a Responsible Agency, or a project applicant may request a meeting among the agencies involved to assist in determining the scope and content of the environmental information that the involved agencies may require. For any project that may affect highways or other facilities under the jurisdiction of the State Department of Transportation, the Department of Transportation can request a scoping meeting. When acting as Lead Agency, the City must convene the meeting as soon as possible but no later than thirty (30) days after a request is made. When acting as a Responsible Agency, the City should make any requests for consultation as soon as possible after receiving a Notice of Preparation.

Prior to completion of the Draft EIR, the Lead Agency shall consult with each Responsible Agency and any public agency that has jurisdiction by law over the project.

When acting as a Lead Agency, the City may fulfill this obligation by distributing the Notice of Preparation in compliance with Local Guidelines Section 7.03 and soliciting the comments of Responsible Agencies, Trustee Agencies, and other affected agencies. The City may also consult with any individual who has special expertise with respect to any environmental impacts involved with a project. The City may also consult directly with any person or organization it believes will be concerned with the environmental effects of the project, including any interested individuals and organizations of which the City is reasonably aware. The purpose of this consultation is to "scope" the EIR's range of analysis. When a Negative Declaration or Mitigated Negative Declaration will be prepared for a project, no scoping meeting need be held, although the City may hold one if it so chooses. For private projects, the City as Lead Agency may charge and collect from the applicant a fee not to exceed the actual cost of the consultations.

In addition to soliciting comments on the Notice of Preparation, the Lead Agency may be required to conduct a scoping meeting to gather additional input regarding the impacts to be analyzed in the EIR. The Lead Agency is required to conduct a scoping meeting when:

(a) The meeting is requested by a Responsible Agency, a Trustee Agency, OPR, or a project applicant;
(b) The project is one of "statewide, regional or area wide significance" as defined in State CEQA Guidelines section 15206; or
(c) The project may affect highways or other facilities under the jurisdiction of the State Department of Transportation, and the Department of Transportation has requested a scoping meeting.

When acting as Lead Agency, the City shall provide notice of the scoping meeting to all of the following:

(a) Any county or city that borders on a county or city within which the project is located, unless the City has a specific agreement to the contrary with that county or city;
(b) Any Responsible Agency;
(c) Any public agency that has jurisdiction by law over the project;
(d) A transportation planning agency, or any public agency that has transportation facilities within its jurisdiction, that could be affected by the project; and
(e) Any organization or individual who has filed a written request for the notice.

The requirement for providing notice of a scoping meeting may be met by including the notice of the public scoping meeting in the public meeting notice.

Government Code section 65352 requires that before a legislative body may adopt or substantially amend a general plan, the planning agency must refer the proposed action to any city or county, within or abutting the area covered by the proposal, and any special district that may be significantly affected by the proposed action. CEQA allows that referral procedure to be conducted concurrently with the scoping meeting required pursuant to this section of the Local CEQA Guidelines.

For projects that are also subject to NEPA, a scoping meeting held pursuant to NEPA satisfies the CEQA scoping requirement as long as notice is provided to the agencies and individuals listed above, and in accordance with these Local Guidelines. (See Local Guideline 5.04 for a discussion of NEPA.)

The City shall call the scoping meeting as soon as possible but not later than 30 days after the meeting was requested. If the scoping meeting is being conducted concurrently with the procedure in Government Code section 65352 for the consideration of adoption or amendment of general plans, each entity receiving a proposed general plan or amendment of a general plan should have 45 days from the date the referring agency mails it or delivers it in which to comment unless a longer period is specified. The commenting entity may submit its comments at the scoping meeting.

A Responsible Agency or other public agency shall only make comments regarding those activities that are within its area of expertise or that are required to be carried out or approved by

the Responsible Agency. These comments must be supported by specific documentation. Any mitigation measures submitted to the City by a Responsible or Trustee Agency shall be limited to measures that mitigate impacts to resources that are within the Responsible or Trustee Agency's authority.

For projects of statewide, area-wide, or regional significance, consultation with transportation planning agencies or with public agencies that have transportation facilities within their jurisdictions shall be for the purpose of obtaining information concerning the project's effect on major local arterials, public transit, freeways, highways, overpasses, on-ramps, off-ramps, and rail transit services. Moreover, the Lead Agency should also consult with public transit agencies with facilities within one-half mile of the proposed project. Any transportation planning agency or public agency that provides information to the Lead Agency must be notified of, and provided with, copies of any environmental documents relating to the project.

(Reference: State CEQA Guidelines, §§ 15082, 15083.)

7.11 EARLY CONSULTATION ON PROJECTS INVOLVING PERMIT ISSUANCE.

When the project involves the issuance of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies, the City, upon request of the applicant, shall meet with the applicant regarding the range of actions, potential alternatives, mitigation measures and significant effects to be analyzed in depth in the EIR. The City may also consult with concerned persons identified by the applicant and persons who have made written requests to be consulted. Such requests for early consultation must be made not later than thirty (30) days after the City's decision to prepare an EIR.

7.12 CONSULTATION WITH WATER AGENCIES REGARDING LARGE DEVELOPMENT PROJECTS.

For certain development projects, cities and counties must consult with water agencies. If the City is a water provider for the project, the city or county may request consultation with the City. (See Local Guidelines Sections 5.16 and 5.17 for more information on these requirements.)

(Reference: State CEQA Guidelines, § 15155.)

7.13 AIRPORT LAND USE PLAN.

When the City prepares an EIR for a project within the boundaries of a comprehensive airport land use plan, or, if such a plan has not been adopted, for a project within two (2) nautical miles of a public airport or public use airport, the City shall utilize the Airport Land Use Planning Handbook published by Caltrans' Division of Aeronautics to assist in the preparation of the EIR relative to potential airport or related safety hazards and noise problems.

(Reference: State CEQA Guidelines, § 15154.)

7.14 GENERAL ASPECTS OF AN EIR.

Both a Draft and Final EIR must contain the information outlined in Local Guidelines Sections 7.17 and 7.18. Each element must be covered, and when elements are not separated into distinct sections, the document must state where in the document each element is covered.

The body of the EIR shall include summarized technical data, maps, diagrams and similar relevant information. Highly technical and specialized analyses and data should be included in appendices. Appendices may be prepared in separate volumes, but must be equally available to the public for examination. All documents used in preparation of the EIR must be referenced. An EIR shall not include "trade secrets," locations of archaeological sites and sacred lands, or any other information subject to the disclosure restrictions of the Public Records Act (Government Code section 7920.000, et seq.).

The EIR should discuss environmental effects in proportion to their severity and probability of occurrence. Effects dismissed in the Initial Study as clearly insignificant and unlikely to occur need not be discussed.

The Initial Study should be used to focus the EIR so that the EIR identifies and discusses only the specific environmental problems or aspects of the project that have been identified as potentially significant or important. A copy of the Initial Study should be attached to the EIR or included in the administrative record to provide a basis for limiting the impacts discussed.

The EIR shall contain a statement briefly indicating the reason for determining that various effects of a project that could possibly be considered significant were not found to be significant and consequently were not discussed in detail in the EIR. The City should also note any conclusion by it that a particular impact is too speculative for evaluation.

The EIR should omit unnecessary descriptions of projects and emphasize feasible mitigation measures and alternatives to projects.

7.15 USE OF REGISTERED CONSULTANTS IN PREPARING EIRS.

An EIR is not a technical document that can be prepared only by a registered consultant or professional. However, state statutes may provide that only registered professionals can prepare certain technical studies that will be used in an EIR, or that will control the detailed design, construction, or operation of the proposed project and that will be prepared in support of an EIR.

(Reference: State CEQA Guidelines, § 15149.)

7.16 INCORPORATION BY REFERENCE.

An EIR, Negative Declaration, or Mitigated Negative Declaration may incorporate by reference all or portions of another document that is a matter of public record or is generally available to the public. Any incorporated document shall be considered to be set forth in full as part of the text of the environmental document. When all or part of another document is incorporated by reference, that document shall be made available to the public for inspection at

the City's offices. The environmental document shall state where incorporated documents will be available for inspection.

When incorporation by reference is used, the incorporated part of the referenced document shall be briefly summarized, if possible, or briefly described if the data or information cannot be summarized. The relationship between the incorporated document and the EIR, Negative Declaration, or Mitigated Negative Declaration shall be described. When information from an environmental document that has previously been reviewed through the state review system ("State Clearinghouse") is incorporated by the City, the state identification number of the incorporated document should be included in the summary or text of the EIR.

(Reference: State CEQA Guidelines, § 15150.)

7.17 STANDARDS FOR ADEQUACY OF AN EIR.

An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information that enables them to make a decision that takes into account the environmental consequences of the project. The evaluation of environmental effects need not be exhaustive, but must be within the scope of what is reasonably feasible. The EIR should be written and presented in such a way that it can be understood by governmental decision-makers and members of the public. A good faith effort at completeness is necessary. The adequacy of an EIR is assessed in terms of what is reasonable in light of factors such as the magnitude of the project at issue, the severity of its likely environmental impacts, and the geographic scope of the project. CEQA does not require a Lead Agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commenters, but CEQA does require the Lead Agency to make a good faith, reasoned response to timely comments raising significant environmental issues.

There is no need to unreasonably delay adoption of an EIR in order to include results of studies in progress, even if those studies will shed some additional light on subjects related to the project.

(Reference: State CEQA Guidelines, § 15151.)

7.18 FORM AND CONTENT OF EIR.

The text of the EIR should normally be less than 150 pages. For proposals of unusual scope or complexity, the EIR may be longer than 150 pages but should normally be less than 300 pages. The required contents of an EIR are set forth in Sections 15122 through 15132 of the State CEQA Guidelines. In brief, the EIR must contain:

(a) A table of contents or an index;
(b) A brief summary of the proposed project, including each significant effect with proposed mitigation measures and alternatives, areas of known controversy and issues to be resolved including the choice among alternatives, how to mitigate the significant effects and whether there are any significant and unavoidable impacts (generally, the summary should be less than fifteen (15) pages);

(c) A description of the proposed project, including its underlying purpose and a list of permit and other approvals required to implement the project (see Local Guidelines Section 7.24 regarding analysis of future project expansion);

(d) A description of the environmental setting, which includes the project's physical environmental conditions from both a local and regional perspective at the time the Notice of Preparation is published, or if no Notice of Preparation is published, at the time environmental analysis begins. (State CEQA Guidelines section 15125.) This environmental setting will normally constitute the baseline physical conditions by which the Lead Agency determines whether an impact is significant. However, the City, when acting as Lead Agency, may choose any baseline that is appropriate as long as the City's choice of baseline is supported by substantial evidence;

(e) A discussion of any inconsistencies between the proposed project and applicable general, specific and regional plans. Such plans include, but are not limited to, the applicable air quality attainment or maintenance plan or State Implementation Plan, area-wide waste treatment and water quality control plans, regional transportation plans, regional housing allocation, regional blueprint plans, plans for the reduction of greenhouse gas emissions, habitat conservation plans, natural community conservation plans and regional land use plans;

(f) A description of the direct and indirect significant environmental impacts of the proposed project explaining which, if any, can be avoided or mitigated to a level of insignificance, indicating reasons that various possible significant effects were determined not to be significant and denoting any significant effects that are unavoidable or could not be mitigated to a level of insignificance. Direct and indirect significant effects shall be clearly identified and described, giving due consideration to both short-term and long-term effects;

(g) Potentially significant energy implications of a project must be considered to the extent relevant and applicable to the project (see Local Guidelines Section 5.20);

(h) An analysis of a range of alternatives to the proposed project that could feasibly attain the project's objectives as discussed in Local Guidelines Section 7.23;

(i) A description of any significant irreversible environmental changes that would be involved in the proposed action should it be implemented if, and only if, the EIR is being prepared in connection with:

(1) The adoption, amendment, or enactment of a plan, policy, or ordinance of a public agency;

(2) The adoption by a Local Agency Formation Commission of a resolution making determinations; or

(3) A project that will be subject to the requirement for preparing an Environmental Impact Statement pursuant to NEPA;

(j) An analysis of the growth-inducing impacts of the proposed action. The discussion should include ways in which the project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Growth-inducing impacts may include the estimated energy consumption of growth induced by the project;

(k) A discussion of any significant, reasonably anticipated future developments and the cumulative effects of all proposed and anticipated action as discussed in Local Guidelines Section 7.24;

(l) In certain situations, a regional analysis should be completed for certain impacts, such as air quality;

(m) A discussion of any economic or social effects, to the extent that they cause, or may be used to determine, significant environmental impacts;

(n) A statement briefly indicating the reasons that various possible significant effects of a project were determined not to be significant and, therefore, were not discussed in the EIR;

(o) The identity of all federal, state or local agencies or other organizations and private individuals consulted in preparing the EIR, and the identity of the persons, firm or agency preparing the EIR, by contract or other authorization. To the fullest extent possible, the City should integrate CEQA review with these related environmental review and consultation requirements;

(p) A discussion of those potential effects of the proposed project on the environment that the City has determined are or may be significant. The discussion on other effects may be limited to a brief explanation as to why those effects are not potentially significant; and

(q) A description of feasible measures, as set forth in Local Guidelines Section 7.22, which could minimize significant adverse impacts.

(Reference: State CEQA Guidelines, §§ 15120-15148.)

7.19 CONSIDERATION AND DISCUSSION OF SIGNIFICANT ENVIRONMENTAL IMPACTS.

An EIR must identify and focus on the significant effects of the proposed project on the environment. In assessing the proposed project's potential impacts on the environment, the City should normally limit its examination to comparing changes that would result from the project as compared to the existing physical conditions in the affected area as they exist when the Notice of Preparation is published. If a Notice of Preparation is not published for the project, the City should compare the proposed project's potential impacts to the physical conditions that exist at the time environmental review begins. Direct and indirect significant effects of the project on the environment must be clearly identified and described, considering both the short-term and long-term effects. The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the project that may impact resources in the project area, such as water, historical resources, scenic quality, and public services. The EIR must also analyze any significant environmental effects the project might cause or risk exacerbating by bringing development and people into the area. If applicable, an EIR should also evaluate any potentially significant direct, indirect, or cumulative environmental impacts of locating development in areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas), including both short-term and long-term conditions, as identified on authoritative hazard maps, risk assessments or in land use plans addressing such hazards areas.

If analysis of the project's energy use reveals that the project may result in significant environmental effects due to wasteful, inefficient, or unnecessary use of energy, or wasteful use

of energy resources, the EIR shall mitigate that energy use. This analysis should include the project's energy use for all project phases and components, including transportation-related energy, during construction and operation. In addition to building code compliance, other relevant considerations may include, among others, the project's size, location, orientation, equipment use and any renewable energy features that could be incorporated into the project. This analysis is subject to the rule of reason and shall focus on energy use that is caused by the project. This analysis may be included in related analyses of air quality, greenhouse gas emissions, transportation or utilities in the discretion of the Lead Agency.

The EIR must describe all significant impacts, including those that can be mitigated but not reduced to a level of insignificance. Where there are impacts that cannot be alleviated without imposing an alternative design, their implications and the reasons why the project is being proposed, notwithstanding their effect, should be described.

The EIR must also discuss any significant irreversible environmental changes that would be caused by the project. For example, use of nonrenewable resources during the initial and continued phases of a project may be irreversible if a large commitment of such resources makes removal or nonuse thereafter unlikely. Additionally, the discussion of irreversible commitment of resources may include a discussion of how the project preempts future energy development or future energy conservation. Irretrievable commitments of resources to the proposed project should be evaluated to assure that such current consumption is justified.

(Reference: Pub. Resources Code, § 21100.)

7.20 ENVIRONMENTAL SETTING

An EIR must include a description of the physical environmental conditions in the vicinity of the project. This environmental setting will normally constitute the baseline physical conditions by which the Lead Agency determines whether an impact is significant. The description of the environmental setting shall be no longer than is necessary to provide an understanding of the significant effects of the proposed project and its alternatives. The purpose of this requirement is to give the public and decision makers the most accurate and understandable picture practically possible of the project's likely near-term and long-term impacts.

(1) Generally, the Lead Agency should describe physical environmental conditions as they exist at the time the Notice of Preparation is published, or if no Notice of Preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. Where existing conditions change or fluctuate over time, and where necessary to provide the most accurate picture practically possible of the project's impacts, the Lead Agency may define existing conditions by referencing historic conditions, or conditions expected when the project becomes operational, or both, that are supported with substantial evidence. In addition, the Lead Agency may also use baselines consisting of both existing conditions and projected future conditions that are supported by reliable projections based on substantial evidence in the record.

(2) The Lead Agency may use projected future conditions (beyond the date of project operations) as the sole baseline for analysis only if it demonstrates with substantial evidence that use of existing conditions would be either misleading or without informative value to decision-

makers and the public. Use of projected future conditions as the only baseline must be supported by reliable projections based on substantial evidence in the record.

(3) An existing conditions baseline shall not include hypothetical conditions—such as those that might be allowed, but have never actually occurred, under existing permits or plans—as the baseline.

(State CEQA Guidelines, § 15125.)

7.21 ANALYSIS OF CUMULATIVE IMPACTS.

An EIR must discuss cumulative impacts when the project's incremental effect is "cumulatively considerable" as defined in Local Guidelines Section 11.14. When the City is examining a project with an incremental effect that is not "cumulatively considerable," it need not consider that effect significant, but must briefly describe the basis for this conclusion. A project's contribution may be less than cumulatively considerable if the project is required to implement or fund its fair share of a mitigation measure designed to alleviate the cumulative impact. When relying on a fee program or mitigation measure(s), the City must identify facts and analysis supporting its conclusion that the cumulative impact is less than significant.

The City may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved plan or mitigation program that provides specific requirements that will avoid or substantially lessen the cumulative problem in the geographic area in which the project is located. Such plans and programs may include, but are not limited to:

(1) Water quality control plans;

(2) Air quality attainment or maintenance plans;

(3) Integrated waste management plans;

(4) Habitat conservation plans;

(5) Natural community conservation plans; and/or

(6) Plans or regulations for the reduction of greenhouse gas emissions.

When relying on such a regulation, plan, or program, the City should explain how implementing the particular requirements of the plan, regulation or program will ensure that the project's incremental contribution to the cumulative effect is not cumulatively considerable.

A cumulative impact consists of an impact that is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts. An EIR should not discuss impacts that do not result in part from the project evaluated in the EIR.

The discussion of cumulative impacts in an EIR must focus on the cumulative impacts to which the identified other projects contribute, rather than on the attributes of other projects that do

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not contribute to the cumulative impact. The discussion of significant cumulative impacts must include either of the following:

(1) A list of past, present, and probable future projects causing related or cumulative impacts including, if necessary, those projects outside the control of the City; or

(2) A summary of projections contained in an adopted local, regional or statewide plan, or related planning document, that describes or evaluates conditions contributing to the cumulative effect. Such plans may include: a general plan, regional transportation plan, or a plan for the reduction of greenhouse gas emissions. A summary of projections may also be contained in an adopted or certified prior environmental document for such a plan. Such projections may be supplemented with additional information such as a regional modeling program. Documents used in creating a summary of projections must be referenced and made available to the public.

When utilizing a list, as suggested above, factors to consider when determining whether to include a related project should include the nature of each environmental resource being examined and the location and type of project. Location may be important, for example, when water quality impacts are involved since projects outside the watershed would probably not contribute to a cumulative effect. Project type may be important, for example, when the impact is specialized, such as a particular air pollutant or mode of traffic.

Public Resources Code section 21094 also states that if a Lead Agency determines that a cumulative effect has been adequately addressed in an earlier EIR, it need not be examined in a later EIR if the later project's incremental contribution to the cumulative effect is not cumulatively considerable. A cumulative effect has been adequately addressed in the prior EIR if:

(1) it has been mitigated or avoided as a result of the prior EIR; or

(2) the cumulative effect has been examined in a sufficient level of detail to enable the effect to be mitigated or avoided by site-specific revisions, the imposition of conditions, or other means in connection with the approval of the later project.

Public Resources Code section 21094 only applies to earlier projects that (1) are consistent with the program, plan, policy, or ordinance for which an environmental impact report has been prepared and certified, (2) are consistent with applicable local land use plans and zoning of the city, county, or city and county in which the later project would be located and (3) are not subject to Public Resources Code section 21166.

If the Lead Agency determines that the cumulative effect has been adequately addressed in a prior EIR, the Lead Agency should clearly explain the basis for its determination in the current environmental documentation for the project.

The City should define the geographic scope of the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used.

(Reference: State CEQA Guidelines, § 15130.)

7.22 ANALYSIS OF MITIGATION MEASURES.

The discussion of mitigation measures in an EIR must distinguish between measures proposed by project proponents and other measures proposed by Lead, Responsible or Trustee Agencies. This discussion shall identify mitigation measures for each significant environmental effect identified in the EIR.

Where several measures are available to mitigate an impact, each should be disclosed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures shall not be deferred until some future time The specific details of a mitigation measure, however, may be developed after project approval when it is impractical or infeasible to include those details during the project's environmental review provided that the Lead Agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will be considered, analyzed, and potentially incorporated in the mitigation measure. Compliance with a regulatory permit or other similar process may be identified as mitigation if compliance would result in implementation of measures that would be reasonably expected, based on substantial evidence in the record, to reduce the significant impact to the specified performance standards.

If a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measure shall be disclosed but in less detail than the significant effects of the project itself.

If a project includes a housing development, the City may not reduce the project's proposed number of housing units as a mitigation measure or project alternative if the City determines that there is another feasible specific mitigation measure or project alternative that would provide a comparable level of mitigation without reducing the number of housing units.

Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments. In the case of the adoption of a plan, policy, regulation, or other public project, mitigation measures can be incorporated into the plan, policy, regulation, or project design. Mitigation measures must also be consistent with all applicable constitutional requirements such as the "nexus" and "rough proportionality" standards—i.e., there must be an essential nexus between the mitigation measure and a legitimate governmental interest, and the mitigation measure must be "roughly proportional" to the impacts of the project.

Where maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of a historical resource will be conducted in a manner consistent with the Secretary of the Interior's "Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings" (1995), Weeks and Grimmer, the project's impact on the historical resource shall generally be considered mitigated below a level of significance and thus not significant.

The City should, whenever feasible, seek to avoid damaging effects on any historical resource of an archaeological nature. The following must be considered and discussed in an EIR for a project involving an archaeological site:

(a) Preservation in place is the preferred manner of mitigating impacts to archaeological sites; and

(b) Preservation in place may be accomplished by, but is not limited to, the following:

(1) Planning construction to avoid archaeological sites;

(2) Incorporation of sites within parks, green space, or other open spaces;

(3) Covering the archaeological sites with a layer of chemically stable soil before building tennis courts, parking lots, or similar facilities on the site; and/or

(4) Deeding the site into a permanent conservation easement.

When data recovery through excavation is the only feasible mitigation, a data recovery plan, which makes provision for adequately recovering the scientifically consequential information from and about the historical resource, shall be prepared and adopted prior to excavation. Such studies must be deposited with the California Historical Resources Regional Information Center.

Data recovery shall not be required for a historical resource if the City determines that existing testing or studies have adequately recovered the scientifically consequential information from and about the archaeological or historical resource, provided that the determination is documented in the EIR and that the studies are deposited with the California Historical Resources Regional Information Center.

(Reference: State CEQA Guidelines, § 15126.4.)

7.23 ANALYSIS OF ALTERNATIVES IN AN EIR.

The alternatives analysis must describe and evaluate the comparative merits of a range of reasonable alternatives to the project or to the location of the project which would feasibly attain most of the basic objectives of the project, but which would avoid or substantially lessen any of the significant effects of the project. An EIR need not consider every conceivable alternative to a project, and it need not consider alternatives that are infeasible. Rather, an EIR must consider a reasonable range of potentially feasible alternatives that will foster informed decision-making and public participation.

Purpose of the Alternatives Analysis: An EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment. For this reason, a discussion of alternatives must focus on alternatives to the project or its location that are capable of avoiding or substantially lessening any significant effect of the project, even if these alternatives would impede to some degree the attainment of the project objectives or would be more costly.

Selection of a Range of Reasonable Alternatives: The range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic purposes of the project and could avoid or substantially lessen one or more of the significant effects, even if those alternatives would be more costly or would impede to some degree the attainment of the project's objectives. The EIR should briefly describe the rationale for selecting the alternatives to

be discussed. The EIR should also identify any alternatives that were considered by the Lead Agency and rejected as infeasible during the scoping process, and it should briefly explain the reasons for rejecting those alternatives. Additional information explaining the choice of alternatives should be included in the administrative record. Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are: (a) failure to meet most of the basic project objectives; (b) infeasibility; or (c) inability to avoid significant environmental impacts.

Evaluation of Alternatives: The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis and comparison with the proposed project. A matrix displaying the major characteristics and significant environmental effects of each alternative may be used to summarize the comparison. The matrix may also identify and compare the extent to which each alternative meets project objectives. If an alternative would cause one or more significant effects in addition to those that would be caused by the project as proposed, the significant effects of the alternative shall be discussed but in less detail than the significant effects of the project as proposed.

The Rule of Reason: The range of alternatives required in an EIR is governed by a "rule of reason" which courts have held means that an alternatives discussion must be reasonable in scope and content. Therefore, the EIR must set forth only those alternatives necessary to permit public participation, informed decision-making, and a reasoned choice. The alternatives shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project. Of those alternatives, the EIR need examine in detail only the ones the City determines could feasibly attain most of the basic objectives of the project. An EIR need not consider an alternative whose effect cannot be reasonably ascertained and whose implementation is remote and speculative.

Feasibility of Alternatives: The factors that may be taken into account when addressing the feasibility of alternatives include: site suitability; economic viability; availability of infrastructure; general plan consistency; other plans or regulatory limitations; jurisdictional boundaries (projects with a regionally significant impact should consider the regional context); and whether the proponent already owns the alternative site or can reasonably acquire, control or otherwise have access to the site. No one factor establishes a fixed limit on the scope of reasonable alternatives.

Alternative Locations: The first step in the alternative location analysis is to determine whether any of the significant effects of the project could be avoided or substantially lessened by putting the project in another location. This is the key question in this analysis. Only locations that would avoid or substantially lessen any of the significant effects of the project need be considered for inclusion in the EIR.

The second step in this analysis is to determine whether any of the alternative locations are feasible. If the City concludes that no feasible alternative locations exist, it must disclose its reasons, and it should include them in the EIR. When a previous document has sufficiently analyzed a range of reasonable alternative locations and environmental impacts for a project with the same basic purpose, the City should review the previous document and incorporate the previous document by reference. To the extent the circumstances have remained substantially the same

with respect to an alternative, the EIR may rely on the previous document to help it assess the feasibility of the potential project alternative.

The "No Project" Alternative: The specific alternative of "no project" must be evaluated along with its impacts. The purpose of describing and analyzing the no project alternative is to allow decision-makers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project. The no project alternative may be different from the baseline environmental conditions. The no project alternative will be the same as the baseline only if it is identical to the existing environmental setting and the Lead Agency has chosen the existing environmental setting as the baseline.

A discussion of the "no project" alternative should proceed along one of two lines:

(a) When the project is the revision of an existing land use or regulatory plan, policy or ongoing operation, the "no project" alternative will be the continuation of the existing plan, policy or operation into the future. Typically, this is a situation where other projects initiated under the existing plan will continue while the new plan is developed. Thus, the projected impacts of the proposed plan or alternative plans would be compared to the impacts that would occur under the existing plan; or

(b) If the project is other than a land use or regulatory plan, for example a development project on identifiable property, the "no project" alternative is the circumstance under which the project does not proceed. This discussion would compare the environmental effects of the property remaining in its existing state against environmental effects that would occur if the project is approved. If disapproval of the project would result in predictable actions by others, such as the proposal of some other project, this "no project" consequence should be discussed.

After defining the "no project" alternative, the City should proceed to analyze the impacts of the "no project" alternative by projecting what would reasonably be expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services. If the "no project" alternative is the environmentally superior alternative, the EIR must also identify another environmentally superior alternative among the remaining alternatives.

Remote or Speculative Alternatives: An EIR need not consider an alternative whose effect cannot be reasonably ascertained and whose implementation is remote and speculative.

(Reference: State CEQA Guidelines, § 15126.6.)

7.24 ANALYSIS OF FUTURE EXPANSION.

An EIR must include an analysis of the environmental effects of future expansion (or other similar future modifications) if there is credible and substantial evidence that:

(a) The future expansion or action is a reasonably foreseeable consequence of the initial project; and

(b) The future expansion or action is likely to change the scope or nature of the initial project or its environmental effects.

Absent these two circumstances, future expansion of a project need not be discussed. CEQA does not require speculative discussion of future development that is unspecific or uncertain. However, if future action is not considered now, it must be considered and environmentally evaluated before it is actually implemented.

(Reference: *Laurel Heights Improvement Ass'n v. Regents of University of California* (1988) 47 Cal.3d 376, 396.)

7.25 NOTICE OF COMPLETION OF DRAFT EIR; NOTICE OF AVAILABILITY OF DRAFT EIR.

Notice of Completion. When the Draft EIR is completed, a Notice of Completion (Form "H") must be filed with the Office of Planning and Research in an electronic form via the Office of Planning and Research's CEQA Submit website, which is located at the following web address: https://ceqasubmit.opr.ca.gov/Security/LogOn?ReturnUrl=%2f. The Notice of Completion shall contain:

(a) A brief description of the proposed project;
(b) The location of the proposed project including the proposed project's latitude and longitude;
(c) An address where copies of the Draft EIR are available and a description of how the Draft EIR can be provided in an electronic format; and
(d) The review period during which comments will be received on the Draft EIR.

The Office of Planning and Research has developed a model form Notice of Completion. Form H follows OPR's model. To ensure that the documents are accepted by OPR staff, this form should be used when documents are transmitted to OPR.

Notice of Availability. At the same time it sends a Notice of Completion to the Office of Planning and Research, the City shall provide public notice of the availability of the Draft EIR by distributing a Notice of Availability of Draft EIR (Form "K"). The Notice of Availability shall include at least the following information:

(a) A brief description of the proposed project and its location;
(b) The starting and ending dates for the review period during which the City will receive comments, the manner in which the City will receive those comments, and whether the review period has been shortened;
(c) The date, time, and place of any scheduled public meetings or hearings to be held by the City on the proposed project, if the City knows this information when it prepares the Notice;
(d) A list of the significant environmental effects anticipated as a result of the project;
(e) The address where copies of the EIR and all documents incorporated by reference in the EIR will be available for public review, and a description of how the Draft EIR can be obtained in electronic format. This location shall be readily accessible to the public during the City's normal working hours ; and
(f) A statement indicating whether the project site is included on any list of hazardous waste facilities, land designated as hazardous waste property, or hazardous waste disposal site,

and, if so, the information required in the Hazardous Waste and Substances Statement pursuant to Government Code section 65962.5.

The Notice of Availability shall be provided to:

(a) Each Responsible and Trustee Agency;
(b) Any other federal, state, or local agency that has jurisdiction by law or exercises authority over resources affected by the project, including:

(1) Any water supply agency consulted under Local Guidelines Section 5.16;

(2) Any city or county bordering on the project area;

(3) For a project of statewide, regional, or area-wide significance, any transportation agencies or public agencies that have major local arterials or public transit facilities within five (5) miles of the project site; or freeways, highways, or rail transit service within ten (10) miles of the project site that could be affected by the project;

(4) For a subdivision project located within one mile of a facility of the State Water Resources Development System, the California Department of Water Resources; and

(5) For a general plan amendment, a project of statewide, regional, or area-wide significance, or a project that relates to a public use airport, to any "military service" (defined in Section 11.42 of these Local Guidelines) that has provided the City with its contact office and address and notified the City of the specific boundaries of a "low-level flight path" (defined in Section 11.37 of these Local Guidelines), "military impact zone" (defined in Section 11.41 of these Local Guidelines), or "special use airspace" (defined in Section 11.67of these Local Guidelines;

(c) The last known name and address of all organizations and individuals who have previously filed a written request with the City to receive these Notices;
(d) For certain projects that may impact a low-level flight path, military impact zone, or special use airspace and that meet the other criteria of Local Guidelines Section 7.04, the specified military services contact;
(e) For certain projects that involve the construction or alteration of a facility anticipated to emit hazardous air emissions or handle hazardous substances within one-quarter mile of a school and that meet the other requirements of Local Guidelines Section 7.36, any potentially affected school district;
(f) For certain waste-burning projects that meet the requirements of Local Guidelines Section 5.11 (see also Local Guidelines Section 7.27), the owners and occupants of property within one-fourth mile of any parcel on which the project will be located; and
(g) For a project that establishes or amends a redevelopment plan that contains land in agricultural use, notice and a copy of the Draft EIR shall be provided to the agricultural and farm agencies and organizations specified in Health and Safety Code section 33333.3.

The City requires requests for copies of these Notices to be in writing and to be renewed annually; moreover, the City may charge a fee for the reasonable cost of providing these Notices.

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A project will not be invalidated due to a failure to send a requested Notice provided there has been substantial compliance with these notice provisions.

Staff may also consult with and obtain comments from any person known to have special expertise or any other person or organization whose comments relative to the Draft EIR would be desirable.

Notice shall be given to the last known name and address of all organizations and individuals who have previously requested notice; by posting the notice on the website of the lead agency; and by at least one of the following procedures:

(a) Publication of the Notice of Completion and/or the Notice of Availability at least once in a newspaper of general circulation in the area affected by the proposed project. If more than one area will be affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas;
(b) Posting of the Notice of Completion and/or the Notice of Availability on and off site in the area where the project is to be located; or
(c) Direct mailing of the Notice of Completion and/or the Notice of Availability to owners and occupants of property contiguous to the project, as identified on the latest equalized assessment roll.

The Notice of Completion and Notice of Availability shall be posted in the office of the Clerk in each county in which the project is located for at least thirty (30) days. If the public review period for the Draft EIR is longer than thirty (30) days, the City may wish to leave the Notice posted until the public review period for the Draft EIR has expired.

Copies of the Draft EIR shall also be made available at the City office for review by members of the general public. The City may require any person obtaining a copy of the Draft EIR to reimburse the City for the actual cost of its reproduction. Copies of the Draft EIR should also be furnished to appropriate public library systems.

The City shall also post an electronic copy of the Notice of Completion, Notice of Availability, and Draft EIR on its website, if any.

(Reference: Pub. Resources Code, § 21082.1; State CEQA Guidelines, §§ 15085, 15087.)

7.26 SUBMISSION OF DRAFT EIR TO STATE CLEARINGHOUSE.

A Draft EIR must be submitted to the State Clearinghouse, at the same time as the Notice of Completion, in an electronic form as required by the Office of Planning and Research, regardless of whether the document must be circulated for review and comment by state agencies under State CEQA Guidelines section 15205 and 15206. The Draft EIR must be submitted via the Office of Planning and Research's CEQA Submit website (https://ceqasubmit.opr.ca.gov/Security/LogOn?ReturnUrl=%2f). The CEQA Submit website differentiates between environmental documents that do require review and comment by state agencies and those that do not. In particular, the website provides a "Local Review Period" tab for submitting documents that do not require review and comment by state agencies, and a "State

Review Period" tab for submitting documents that do require review and comment by state agencies.

A Draft EIR must be submitted to the State Clearinghouse for review and comment by state agencies (i.e., the Draft EIR must be submitted through the CEQA Submit website under the "State Review Period" tab) in the following situations:

(a) A state agency is the Lead Agency for the Draft EIR;
(b) A state agency is a Responsible Agency, Trustee Agency, or otherwise has jurisdiction by law over resources potentially affected by the project; or
(c) The Draft EIR is for a project identified in State CEQA Guidelines section 15206 as being a project of statewide, regional, or area-wide significance.

State CEQA Guidelines section 15206 identifies the following types of projects as being examples of projects of statewide, regional, or area-wide significance that require submission to the State Clearinghouse for circulation:

(1) General plans, elements, or amendments for which an EIR was prepared;

(2) Projects that have the potential for causing significant environmental effects beyond the city or county where the project would be located, such as:

  (a) Residential development of more than 500 units;
  (b) Commercial projects employing more than 1,000 persons or covering more than 500,000 square feet of floor space;
  (c) Office building projects employing more than 1,000 persons or covering more than 250,000 square feet of floor space;
  (d) Hotel or motel development of more than 500 rooms; and
  (e) Industrial projects housing more than 1,000 persons, occupying more than 40 acres of land, or covering more than 650,000 square feet of floor area;

(3) Projects for the cancellation of a Williamson Act contract covering more than 100 acres;

(4) Projects in one of the following Environmentally Sensitive Areas:

  (a) Lake Tahoe Basin;
  (b) Santa Monica Mountains Zone;
  (c) Sacramento-San Joaquin River Delta;
  (d) Suisun Marsh;
  (e) Coastal Zone, as defined by the California Coastal Act;
  (f) Areas within one-quarter mile of a river designated as wild and scenic; or
  (g) Areas within the jurisdiction of the San Francisco Bay Conservation and Development Commission;

(5) Projects that would affect sensitive wildlife habitats or the habitats of any rare, threatened, or endangered species;

(6) Projects that would interfere with water quality standards; and

(7) Projects that would provide housing, jobs, or occupancy for 500 or more people within 10 miles of a nuclear power plant.

A Draft EIR may also be submitted to the State Clearinghouse for review and comment by state agencies when a state agency has special expertise with regard to the environmental impacts involved.

Submission of the Draft EIR to the State Clearinghouse affects the timing of the public review period as set forth in Local Guidelines Section 7.28.

(Reference: Pub. Resources Code, § 21091; State CEQA Guidelines, §§ 15205, 15206.)

7.27 SPECIAL NOTICE REQUIREMENTS FOR WASTE- AND FUEL-BURNING PROJECTS.

For any waste-burning project, as defined in Local Guidelines Section 5.11, in addition to the notice requirements specified in Local Guidelines Sections 7.25 and 7.26, Notice of Availability of the Draft EIR shall be given by direct mailing or any other method calculated to provide delivery of the notice to the owners and occupants of property within one-fourth mile of any parcel or parcels on which the project is located.

(Reference: Pub. Resources Code, § 21092(c).)

7.28 TIME FOR REVIEW OF DRAFT EIR; FAILURE TO COMMENT.

A period of between thirty (30) and sixty (60) days from the filing of the Notice of Completion of the Draft EIR shall be allowed for review of and comment on the Draft EIR, except in unusual situations.

If the Draft EIR is for a proposed project where a state agency is the lead agency, a responsible agency, or a trustee agency; a state agency otherwise has jurisdiction by law with respect to the project; or the proposed project is of sufficient statewide, regional, or area-wide significance as determined pursuant to State CEQA Guidelines section 15206, the review period shall be at least forty-five (45) days (unless a shorter period is approved as set forth below), and the lead agency shall provide the document in an electronic form, as required by the Office of Planning and Research, to the State Clearinghouse for review and comment by state agencies.

For purposes of calculating the length of the public review period, the last day of the public review period cannot fall on a weekend, a legal holiday, or other day on which the lead agency's offices are closed.[2] (Reference: *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690, 708.)

[2] A public agency's "offices are closed" for purposes of this section on days in which the agency is formally closed for business (for example, due to a weekend, a legal holiday, or a formal furlough affecting the entire office). A public agency's office is not considered closed for purposes of this section where the agency's office may be physically closed, but the agency is nonetheless open for business and is operating remotely or virtually (for example, in response to the Covid-19 pandemic).

If a state agency is a Responsible Agency, or if the Draft EIR is submitted to the State Clearinghouse for review and comment by state agencies, the public review period shall be at least as long as the review period established by the State Clearinghouse. The public review period and the state agency review period may, but are not required to, begin and end at the same time. The state agency review period begins (day one) on the date that the State Clearinghouse distributes the Draft EIR to state agencies. The State Clearinghouse is required to distribute the Draft EIR to state agencies within three (3) working days from the date the State Clearinghouse receives the document, as long as the Draft EIR is complete when submitted to the State Clearinghouse. If the document submitted to the State Clearinghouse is not complete, the State Clearinghouse must notify the Lead Agency. The review period for the public and all other agencies may run concurrently with the state agency review period established by the State Clearinghouse.

Under certain circumstances, a shorter review period of the Draft EIR by the State Clearinghouse can be requested by the City; however, a shortened review period shall not be less than thirty (30) days for a Draft EIR. Any request for a shortened review period must be made in writing by the City to OPR. The City may designate a person to make these requests. The City must contact all Responsible and Trustee agencies and obtain their agreement prior to obtaining a shortened review period. (See the Shortened Review Request Form "P.")

A shortened review period is not available for any proposed project of statewide, regional or area-wide environmental significance as determined pursuant to State CEQA Guidelines section 15206. Any approval of a shortened review period shall be given prior to, and reflected in, the public notices.

In the event a public agency, group, or person whose comments on a Draft EIR are solicited fails to comment within the required time period, it shall be presumed that such agency, group, or person has no comment to make, unless the Lead Agency has received a written request for a specific extension of time for review and comment and a statement of reasons for the request.

Continued planning activities concerning the proposed project, short of formal approval, may continue during the period set aside for review and comment on the Draft EIR.

(Reference: Pub. Resources Code, § 21091; State CEQA Guidelines, §§ 15203, 15205(d).)

7.29 PUBLIC HEARING ON DRAFT EIR.

CEQA does not require formal public hearings for certification of an EIR; public comments may be restricted to written communications. (However, a hearing is required to utilize the limited exemption for Transit Priority Projects as explained in Local Guidelines Section 3.15; to adopt a bicycle transportation plan as explained in Local Guidelines Section 3.19; and for certain other actions involving the replacement or deletion of mitigation measures under State CEQA Guidelines section 15074.1.) However, if the City provides a public hearing on its consideration of a project, the City should include the project's environmental review documents as one of the subjects of the hearing. Notice of the time and place of the hearing shall be given in a timely manner in accordance with any legal requirements applicable to the proposed project. Generally, the requirements of the Ralph M. Brown Act will provide the minimum requirements for the inclusion of CEQA matters on agendas and at hearings. (Gov. Code, § 54950 et seq.) At a

minimum, agendas for meetings and hearings before commissions, boards, councils, and other agencies must be posted in a location that is freely accessible to members of the public at least seventy-two (72) hours prior to a regular meeting. The agenda must contain a brief general description of each item to be discussed and the time and location of the meeting. (Gov. Code, § 54954.2.) Additionally, any legislative body or its presiding officer must post an agenda for each regular or special meeting on the local agency's Internet Web site, if the local agency has one.

(Reference: State CEQA Guidelines, § 15202.)

7.30 RESPONSE TO COMMENTS ON DRAFT EIR.

The Lead Agency shall evaluate any comments on environmental issues received during the public review period for the Draft EIR and shall prepare a written response to those comments that raise significant environmental issues.

As stated below, the City, as Lead Agency, should also consider evaluating and responding to any comments received after the public review period. The written responses shall describe the disposition of any significant environmental issues that are raised in the comments. The responses may take the form of a revision of the Draft EIR, an attachment to the Draft EIR, or some other oral or written response that is adequate under the circumstances. If the City's position is at variance with specific recommendations or suggestions raised in the comment, the City's response must detail the reasons why such recommendations or suggestions were not accepted. The level of detail contained in the response, however, may correspond to the level of detail provided in the comment (i.e., responses to general comments may be general). A general response may be appropriate when a comment does not contain or specifically refer to readily available information, or does not explain the relevance of evidence submitted with the comment.

Moreover, the City shall respond to any specific suggestions for project alternatives or mitigation measures for significant impacts, unless such alternatives or mitigation measures are facially infeasible. The response shall contain recommendations, when appropriate, to alter the project as described in the Draft EIR as a result of an analysis of the comments received.

At least ten (10) days prior to certifying a Final EIR, the Lead Agency shall provide its proposed written response, either in printed copy or in an electronic format, to any public agency that has made comments on the Draft EIR during the public review period. The City, as Lead Agency, is not required to respond to comments received after the public review period. However, the City, as Lead Agency, should consider responding to all comments if it will not delay action on the Final EIR, since any comment received before final action on the EIR can form the basis of a legal challenge. A written response that addresses the comment or adequately explains the City's action in light of the comment may assist in defending against a legal challenge.

(Reference: State CEQA Guidelines, § 15088.)

7.31 PREPARATION AND CONTENTS OF FINAL EIR.

Following the receipt of any comments on the Draft EIR as required herein, such comments shall be evaluated by Staff and a Final EIR shall be prepared.

The Final EIR shall meet all requirements of Local Guidelines Section 7.18 and shall consist of the Draft EIR or a revision of the Draft, a section containing either verbatim or in summary the comments and recommendations received through the review and consultation process, a list of persons, organizations and public agencies commenting on the Draft, and a section containing the responses of the City to the significant environmental points raised in the review and consultation process.

(Reference: State CEQA Guidelines, §§ 15089, 15132.)

7.32 RECIRCULATION WHEN NEW INFORMATION IS ADDED TO EIR.

When significant new information is added to the EIR after notice and consultation but before certification, the Lead Agency must recirculate the Draft EIR for another public review period. The term "information" can include changes in the project or environmental setting as well as additional data or other information.

New information is significant only when the EIR is changed in a way that would deprive the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of a project or a feasible way to mitigate or avoid such an effect, including a feasible project alternative, that the project proponents decline to implement. Recirculation is required, for example, when:

(1) New information added to an EIR discloses:

  (a) A new significant environmental impact resulting from the project or from a new mitigation measure proposed to be implemented; or
  (b) A significant increase in the severity of an environmental impact (unless mitigation measures are also adopted that reduce the impact to a level of insignificance); or
  (c) A feasible project alternative or mitigation measure that clearly would lessen the significant environmental impacts of the project, but which the project proponents decline to adopt; or

(2) The Draft EIR is so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

Recirculation is not required when the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR. If the revision is limited to a few chapters or portions of the EIR, the City as Lead Agency need only recirculate the chapters or portions that have been modified. A decision to not recirculate an EIR must be supported by substantial evidence in the record.

When the City determines to recirculate a Draft EIR, it shall give Notice of Recirculation (Form "M") to every agency, person, or organization that commented on the prior Draft EIR. The Notice of Recirculation must indicate whether new comments must be submitted and whether the City has exercised its discretion to require reviewers to limit their comments to the revised chapters or portions of the recirculated EIR. The City shall also consult again with those persons contacted pursuant to Local Guidelines Section 7.25 before certifying the EIR. When the EIR is substantially

revised and the entire EIR is recirculated, the City may require that reviewers submit new comments and need not respond to those comments received during the earlier circulation period. In those cases, the City should advise reviewers that, although their previous comments remain part of the administrative record, the final EIR will not provide a written response to those comments, and new comments on the revised EIR must be submitted. The City need only respond to those comments submitted in response to the revised EIR.

When the EIR is revised only in part and the City is recirculating only the revised chapters or portions of the EIR, the City may request that reviewers limit their comments to the revised chapters or portions. The City need only respond to: (1) comments received during the initial circulation period that relate to chapters or portions of the document that were not revised and recirculated, and (2) comments received during the recirculation period that relate to the chapters or portions of the earlier EIR that were revised and recirculated.

When recirculating a revised EIR, either in whole or in part, the City must, in the revised EIR or by an attachment to the revised EIR, summarize the revisions made to the previously circulated draft EIR.

(Reference: State CEQA Guidelines, § 15088.5.)

7.33 CERTIFICATION OF FINAL EIR.

Following the preparation of the Final EIR, Staff shall review the Final EIR and make a recommendation to the decision-making body regarding whether the Final EIR has been completed in compliance with CEQA, the State CEQA Guidelines and the City's Local Guidelines. The Final EIR and Staff recommendation shall then be presented to the decision-making body. The decision-making body shall independently review and consider the information contained in the Final EIR and determine whether the Final EIR reflects its independent judgment. Before it approves the project, the decision-making body must certify and find that: (1) the Final EIR has been completed in compliance with CEQA, the State CEQA Guidelines and the City's Local Guidelines; (2) the Final EIR was presented to the decision-making body and the decision-making body reviewed and considered the information contained in the Final EIR before approving the project; and (3) the Final EIR reflects the City's independent judgment and analysis.

Except in those cases in which the City Council is the final decision-making body for the project, any interested person may appeal the certification or denial of certification of a Final EIR to the City Council. Appeals must follow the procedures prescribed by the City.

(Reference: State CEQA Guidelines, § 15090.)

7.34 CONSIDERATION OF EIR BEFORE APPROVAL OR DISAPPROVAL OF PROJECT.

Once the decision-making body has certified the EIR, it may then proceed to consider the proposed project for purposes of approval or disapproval.

(Reference: State CEQA Guidelines, § 15092.)

7.35 FINDINGS.

The decision-making body shall not approve or carry out a project if a completed EIR identifies one or more significant environmental effects of the project unless it makes one or more of the following written findings for each such significant effect, accompanied by a brief explanation of the rationale supporting each finding. For impacts that have been identified as potentially significant, the possible findings are:

(a) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment as identified in the Final EIR, such that the impact has been reduced to a less-than-significant level;
(b) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the City. Such changes have been, or can and should be, adopted by that other agency; or
(c) Specific economic, legal, social, technological or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the Final EIR. The decision-making body must make specific written findings stating why it has rejected an alternative to the project as infeasible.

The findings required by this Section shall be supported by substantial evidence in the record. Measures identified and relied on to mitigate environmental impacts identified in the EIR to below a level of significance should be expressly adopted or rejected in the findings. The findings should include a description of the specific reasons for rejecting any mitigation measures or project alternatives identified in the EIR that would reduce the significant impacts of the project. Any mitigation measures that are adopted must be fully enforceable through permit conditions, agreements, or other measures.

If any of the proposed alternatives could avoid or lessen an adverse impact for which no mitigation measures are proposed, the City shall analyze the feasibility of such alternative(s). If the project is to be approved without including such alternative(s), the City shall find that specific economic, legal, social, technological or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the alternatives identified in the Final EIR and shall list such considerations before such approval.

The decision-making body shall not approve or carry out a project as proposed unless: (1) the project as approved will not have a significant effect on the environment; or (2) the project's significant environmental effects have been eliminated or substantially lessened (as determined through one or more of the findings indicated above), and any remaining unavoidable significant effects have been found acceptable because of facts and circumstances described in a Statement of Overriding Considerations (see Local Guidelines Section 7.37). Statements in the Draft EIR or comments on the Draft EIR are not determinative of whether the project will have significant effects.

When making the findings required by this Section, the City as Lead Agency shall specify the location and custodian of the documents or other material which constitute the record of proceedings upon which it based its decision.

(Reference: State CEQA Guidelines, § 15091.)

7.36 Special Findings Required for Facilities That May Emit Hazardous Air Emissions Near Schools.

Special procedural rules apply to projects involving the construction or alteration of a facility within one-quarter mile of a school when: (1) the facility might reasonably be anticipated to emit hazardous air emissions or to handle an extremely hazardous substance or a mixture containing extremely hazardous substances in a quantity equal to or greater than the threshold specified in Health and Safety Code section 25532(j); and (2) the emissions or substances may pose a health or safety hazard to persons who would attend or would be employed at the school. If the project meets both of those criteria, the Lead Agency may not certify an EIR or approve a Negative Declaration or Mitigated Negative Declaration unless it makes a finding that:

(a) The Lead Agency consulted with the affected school district or districts having jurisdiction over the school regarding the potential impact of the project on the school; and
(b) The school district was given written notification of the project not less than thirty (30) days prior to the proposed certification of the EIR or approval of the Negative Declaration or Mitigated Negative Declaration.

Implementation of this Local Guideline shall be consistent with the definitions and terms utilized in State CEQA Guidelines section 15186.

Additionally, in its role as a Responsible Agency, the City should be aware that for projects involving the acquisition of a school site or the construction of a secondary or elementary school by a school district, the Negative Declaration, Mitigated Negative Declaration, or EIR prepared for the project may not be adopted or certified unless there is sufficient information in the entire record to determine whether any boundary of the school site is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor.

If it is determined that the project involves the acquisition of a school site that is within 500 feet of the edge of the closest traffic lane of a freeway, or other busy traffic corridor, the Negative Declaration, Mitigated Negative Declaration, or EIR may not be adopted or certified unless the school board determines, through a health risk assessment pursuant to Section 44360(b)(2) of the Health and Safety Code and after considering any potential mitigation measures, that the air quality at the proposed project site does not present a significant health risk to pupils.

(Reference: State CEQA Guidelines, § 15186.)

7.37 Statement of Overriding Considerations.

Before a project that has unmitigated significant adverse environmental effects can be approved, the decision-making body must adopt a Statement of Overriding Considerations. If the decision-making body finds in the Statement of Overriding Considerations that specific benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."

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Accordingly, the Statement of Overriding Considerations allows the decision-making body to approve a project despite one or more unmitigated significant environmental impacts identified in the Final EIR. A Statement of Overriding Considerations can be made only if feasible project alternatives or mitigation measures do not exist to reduce the environmental impact(s) to a level of insignificance and the benefits of the project outweigh the adverse environmental effect(s). The feasibility of project alternatives or mitigation measures is determined by whether the project alternative or mitigation measure can be accomplished within a reasonable period of time, taking into account economic, environmental, social, legal and technological factors.

Project benefits that are appropriate to consider in the Statement of Overriding Considerations include the economic, legal, environmental, technological and social value of the project. The City may also consider region-wide or statewide environmental benefits.

Substantial evidence in the entire record must justify the decision-making body's findings and its use of the Statement of Overriding Considerations. If the decision-making body makes a Statement of Overriding Considerations, the Statement must be included in the record of the project approval and it should be referenced in the Notice of Determination.

(Reference: State CEQA Guidelines, § 15093.)

7.38 MITIGATION MONITORING OR REPORTING PROGRAM FOR EIR.

When making findings regarding an EIR, the City must do all of the following:

(a) Adopt a reporting or monitoring program to assure that mitigation measures that are required to mitigate or avoid significant effects on the environment will be implemented by the project proponent or other responsible party in a timely manner, in accordance with conditions of project approval;
(b) Make sure all conditions and mitigation measures are feasible and fully enforceable through permit conditions, agreements, or other measures. Such permit conditions, agreements, and measures must be consistent with applicable constitutional requirements such as the "nexus" and "rough proportionality" standards established by case law; and
(c) Specify the location and the custodian of the documents which constitute the record of proceedings upon which the City based its decision in the resolution certifying the EIR.

There is no requirement that the reporting or monitoring program be circulated for public review; however, the City may choose to circulate it for public comments along with the Draft EIR. Any mitigation measures required to mitigate or avoid significant effects on the environment shall be adopted and made fully enforceable, such as by being imposed as conditions of project approval.

The adequacy of a mitigation monitoring program is determined by the "rule of reason." This means that a mitigation monitoring program does not need to provide every imaginable measure. It needs only to provide measures that are reasonably feasible and that are necessary to avoid significant impacts or to reduce the severity of impacts to a less-than-significant level.

The mitigation monitoring or reporting program shall be designed to assure compliance with the mitigation measures during the implementation and construction of the project. If a

Responsible Agency or Trustee Agency has required that certain conditions be incorporated into the project, the City may request that agency to prepare and submit a proposed reporting or monitoring program. The City shall also require that, prior to the close of the public review period for a Draft EIR, the Responsible or Trustee Agency submit detailed performance objectives for mitigation measures, or refer the City to appropriate, readily available guidelines or reference documents. Any mitigation measures submitted to the City by a Responsible or Trustee Agency shall be limited to measures that mitigate impacts to resources that are within the Responsible or Trustee Agency's authority.

When a project is of statewide, regional, or area-wide significance, any transportation information resulting from the reporting or monitoring program required to be adopted by the City shall be submitted to the regional transportation planning agency where the project is located and to the Department of Transportation. The transportation planning agency and the Department of Transportation are required by law to adopt guidelines for the submittal of these reporting or monitoring programs, so the City may wish to tailor its submittal to such guidelines.

Local agencies have the authority to levy fees sufficient to pay for this program. Therefore, the City may impose a program to charge project proponents fees to cover actual costs of program processing and implementation.

The City may delegate reporting or monitoring responsibilities to an agency or to a private entity that accepts the delegation; however, until mitigation measures have been completed, the City remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program.

The City may choose whether its program will monitor mitigation, report on mitigation, or both. "Reporting" is defined as a written compliance review that is presented to the Board or an authorized staff person. A report may be required at various stages during project implementation or upon completion of the mitigation measure. Reporting is suited to projects that have readily measurable or quantitative mitigation measures or that already involve regular review. "Monitoring" is generally an ongoing or periodic process of project oversight. Monitoring is suited to projects with complex mitigation measures that may exceed the expertise of the City to oversee, are expected to be implemented over a period of time, or require careful implementation to assure compliance.

At its discretion, the City may adopt standardized policies and requirements to guide individually adopted programs.

Standardized policies or requirements for monitoring and reporting may describe, but are not limited to:

(a) The relative responsibilities of various departments within the City for various aspects of the program;
(b) The responsibilities of the project proponent;
(c) Guidelines adopted by the City to govern preparation of programs;
(d) General standards for determining project compliance with the mitigation measures and related conditions of approval;

(e) Enforcement procedures for noncompliance, including provisions for administrative appeal; and/or
(f) A process for informing the Board and staff of the relative success of mitigation measures and using those results to improve future mitigation measures.

When a project is of statewide, regional, or area-wide importance, any transportation information generated by a mitigation monitoring or reporting program must be submitted to the transportation planning agency in the region where the project is located, as well as to the Department of Transportation.

(Reference: State CEQA Guidelines, § 15097.)

7.39 NOTICE OF DETERMINATION.

After approval of a project for which the City is the Lead Agency, Staff shall cause a Notice of Determination (Form "F") to be prepared, filed, and posted. The Notice of Determination shall include the following information:

(a) An identification of the project, including its common name, where possible, and its location. If the Notice of Determination is filed with the State Clearinghouse, the State Clearinghouse identification number for the draft EIR shall be provided.
(b) A brief description of the project;
(c) The City's name and the applicant's name (if any). If different from the applicant, the Notice of Determination shall further provide, if applicable, the identity of the person undertaking the project that is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies, or the identity of the person receiving a lease, permit, license, certificate, or other entitlement for use from one or more public agencies.
(d) The date when the City approved the project;
(e) Whether the project in its approved form with mitigation will have a significant effect on the environment;
(f) A statement that an EIR was prepared and certified pursuant to the provisions of CEQA;
(g) Whether mitigation measures were made a condition of the approval of the project, and whether a mitigation monitoring plan/program was adopted;
(h) Whether findings were made and/or whether a Statement of Overriding Considerations was adopted for the project; and
(i) The address where a copy of the EIR (with comments and responses) and the record of project approval may be examined by the general public.

The Notice of Determination shall be filed within five (5) working days of project approval with both (1) the Clerk of each county in which the project will be located; and (2) the State Clearinghouse in the OPR. (To determine the fees that must be paid with the filing of the Notice of Determination, see Local Guidelines Section 7.42 and the Staff Summary of the CEQA Process.) The County Clerk is required to post the Notice of Determination within twenty-four (24) hours of receipt. The Notice must be posted in the office of the Clerk for a minimum of thirty (30) days. Thereafter, the Clerk shall return the notice to the City with a notation of the period it was posted. The City shall retain the notice for not less than twelve (12) months.

The City, when acting as lead agency, must post its Notice of Determination for a project on its website, if any.

For projects with more than one phase, Staff shall file a Notice of Determination for each phase requiring a discretionary approval. The filing and posting of a Notice of Determination with the Clerk, and, if necessary, with OPR, usually starts a thirty (30) day statute of limitations on court challenges to the approval under CEQA. When separate notices are filed for successive phases of the same overall project, the thirty (30) day statute of limitation to challenge the subsequent phase begins to run when the second notice is filed. Failure to file the Notice may result in a one hundred eighty (180) day statute of limitations.

(Reference: Pub. Resources Code, §§ 21092.2, 21108; State CEQA Guidelines, § 15094.)

7.40 DISPOSITION OF A FINAL EIR.

The City shall file a copy of the Final EIR with the appropriate planning agency of any city or county where significant effects on the environment may occur. The City shall also retain one or more copies of the Final EIR as a public record for a reasonable period of time. Finally, for private projects, the City may require that the project applicant provide a copy of the certified Final EIR to each Responsible Agency.

(Reference: State CEQA Guidelines, § 15095.)

7.41 PRIVATE PROJECT COSTS.

For private projects, the person or entity proposing to carry out the project shall be charged a reasonable fee to recover the estimated costs incurred by the City in preparing, circulating, and filing the Draft and Final EIRs, as well as all publication costs incident thereto.

7.42 FILING FEES FOR PROJECTS THAT AFFECT WILDLIFE RESOURCES.

At the time a Notice of Determination for an EIR is filed with the County or Counties in which the project is located, a fee of $4,051.25, or the then applicable fee, shall be paid to the Clerk for projects that will adversely affect fish or wildlife resources. These fees are collected by the Clerk on behalf of DFW.

Only one filing fee is required for each project unless the project is tiered or phased and separate environmental documents are prepared. For projects where Responsible Agencies file separate Notices of Determination, only the Lead Agency is required to pay the fee.

Note: County Clerks are authorized to charge a documentary handling fee for each project in addition to the Fish and Wildlife fees specified above. Refer to the Index in the Staff Summary to help determine the correct total amount of fees applicable to the project.

For private projects, the City should pass these costs on to the project applicant.

No fees are required for projects with “no effect” on fish or wildlife resources or for certain projects undertaken by the DFW and implemented through a contract with a non-profit entity or

local government agency. (See Local Guidelines Section 6.24 for more information regarding a "no effect" determination.)

8. TYPES OF EIRS

8.01 EIRs Generally.

This chapter describes a number of examples of various EIRs tailored to different situations. All of these types of EIRs must meet the applicable requirements of Chapter 7 of these Local Guidelines.

8.02 Tiering.

(a) Tiering Generally.

"Tiering" refers to using the analysis of general matters contained in a previously certified broader EIR in later EIRs, Negative Declarations, or Mitigated Negative Declarations prepared for narrower projects. The later EIR, Negative Declaration, or Mitigated Negative Declaration may incorporate by reference the general discussions from the broader EIR and may concentrate solely on the issues specific to the later project.

An Initial Study shall be prepared for the later project and used to determine whether a previously certified EIR may be used and whether new significant effects should be examined. Tiering does not excuse the City from adequately analyzing reasonably foreseeable significant environmental effects of a project, nor does it justify deferring analysis to a later tier EIR, Negative Declaration, or Mitigated Negative Declaration. However, the level of detail contained in a first-tier EIR need not be greater than that of the program, plan, policy, or ordinance being analyzed. When the City is using the tiering process in connection with an EIR for a large-scale planning approval, such as a general plan or component thereof (e.g., an area plan, specific plan or community plan), the development of detailed, site-specific information may not be feasible. Such site-specific information can be deferred, in many instances, until such time as the Lead Agency prepares a future environmental document in connection with a project of a more limited geographical scale, as long as deferral does not prevent adequate identification of significant effects of the planning approval at hand.

(b) Identifying New Significant Impacts.

When assessing whether there is a new significant cumulative effect for purposes of a subsequent tier environmental document, the Lead Agency shall consider whether the incremental effects of the project would be considerable when viewed in the context of past, present, and probable future projects.

A Lead Agency may use only a valid CEQA document as a first-tier document. Accordingly, the City, in its role as Lead Agency, should carefully review the first-tier environmental document to determine whether or not the statute of limitations for challenging the document has run. If the statute of limitations has not expired, the City should use the first-tier document with caution and pay careful attention to the legal status of the document. If the first-tier document is subsequently invalidated, any later environmental document may also be defective.

(c) Infill Projects and Tiering.

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Certain "infill" projects may tier off of a previously certified EIR. An "infill" project is defined as a project with residential, retail, and/or commercial uses, a transit station, a school, or a public office building. It must be located in an urban area on a previously developed site or on an undeveloped site that is surrounded by developed uses. The project must be either consistent with land use planning strategies that achieve greenhouse gas ("GHG") emission reduction targets, feature a small walkable community project, or where a sustainable communities or alternative planning strategy has not yet been adopted for the area, include a residential density of at least 20 units per acre or a floor area ratio of at least 0.75. The project must also meet a number of standards related to energy efficiency that are not yet defined but which SB 226 directs the Office of Planning and Research to prepare.

If an EIR was certified for a planning level decision by a city or county (such as a General Plan or Specific Plan), the scope of the CEQA review for a later "infill" project can be limited to those effects on the environment that: 1) are specific to the project or to the project site and were not addressed as significant effects in the prior EIR; or 2) substantial new information shows will be more significant than described in the prior EIR.

When a project meets the definition of "infill" and either of the above conditions exist but a Mitigated Negative Declaration cannot be adopted, then the subsequent EIR for such a project need not consider alternative locations, densities, and building intensities or growth-inducing impacts.

(d) Statement of Overriding Considerations.

A Lead Agency may also tier off of a previously prepared Statement of Overriding Considerations if certain conditions are met. (See Local Guidelines Section 7.37.)

(Reference: State CEQA Guidelines, § 15152.)

8.03 PROJECT EIR.

The most common type of EIR examines the environmental impacts of a specific development project and focuses primarily on the changes in the environment that would result from the development project.

If the EIR for a redevelopment plan is a Project EIR, all public and private activities or undertakings pursuant to or in furtherance of the Redevelopment Plan shall constitute a single project, which shall be deemed approved at the time of the adoption of the Redevelopment Plan. Although the City will probably not act as a Lead Agency for a Redevelopment Plan, the City may act as a Responsible Agency. (State Guideline Section 15180.)

(Reference: State CEQA Guidelines, §§ 15161, 15180.)

8.04 SUBSEQUENT EIR.

A Subsequent EIR is required when a previous EIR has been prepared and certified, or a Negative Declaration or Mitigated Negative Declaration has been adopted, for a project and at least one of the three following situations occur:

(a) Substantial changes are proposed in the project which will require major revisions of a previous EIR due to the identification of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(b) Substantial changes occur with respect to the circumstances under which the project is to be undertaken which will require major revisions of a previous EIR due to the identification of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(c) New information, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration/Mitigated Negative Declaration was adopted, becomes available and shows any of the following:

(1) the project will have one or more significant effects not discussed in a previous EIR, Negative Declaration, or Mitigated Negative Declaration;

(2) significant effects previously examined will be substantially more severe than shown in a previous EIR;

(3) mitigation measures or alternatives previously found not to be feasible are in fact feasible and would substantially reduce one or more significant effects, but the project proponent declines to adopt the mitigation measures or alternatives; or

(4) mitigation measures or alternatives which were not considered in a previous EIR would substantially lessen one or more significant effects on the environment, but the project proponent declines to adopt the mitigation measures or alternatives.

A Subsequent EIR must receive the same circulation and review as the previous EIR received.

In instances where the City is evaluating a modification or revision to an existing use permit, the City may consider only those environmental impacts related to the changes between what was allowed under the old permit and what is requested under the new permit. Only if these differential impacts fall within the categories described above may the City require additional environmental review.

When the City is considering approval of a development project that is consistent with a general plan for which an EIR was completed, another EIR is required only if the project causes environmental effects peculiar to the parcel which were not addressed in the prior EIR or substantial new information shows the effects peculiar to the parcel will be more significant than described in the prior EIR. (Reference: State CEQA Guidelines, § 15162.)

8.05 SUPPLEMENTAL EIR.

The City may choose to prepare a Supplemental EIR, rather than a Subsequent EIR, if any of the conditions described in Local Guidelines Section 8.04 have occurred but only minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation. To assist the City in making this determination, the decision-making body should request an Initial Study and/or a recommendation by Staff. The Supplemental EIR

need contain only the information necessary to make the previous EIR adequate for the project as revised.

A Supplemental EIR shall be given the same kind of notice and public review as is given to a Draft EIR but may be circulated by itself without recirculating the previous EIR.

When the decision-making body decides whether to approve the project, it shall consider the previous EIR as revised by the Supplemental EIR. Findings shall be made for each significant effect identified in the Supplemental EIR.

(Reference: State CEQA Guidelines, § 15163.)

8.06 ADDENDUM TO AN EIR.

The City shall prepare an Addendum to a previously certified EIR, rather than a Subsequent or Supplemental EIR, only if changes or additions to the EIR are necessary, but none of the conditions described in Local Guidelines Section 8.04 or 8.05 calling for preparation of a Subsequent or Supplemental EIR have occurred. Since significant effects on the environment were addressed by findings in the original EIR, no new findings are required in the Addendum.

An Addendum to an EIR need not be circulated for public review but should be included in or attached to the Final EIR. The decision-making body shall consider the Addendum with the Final EIR prior to making a decision on a project. A brief explanation of the decision not to prepare a Subsequent EIR or a Supplemental EIR should be included in the Addendum, the Lead Agency's findings on the project, or elsewhere in the record. This explanation must be supported by substantial evidence.

(Reference: State CEQA Guidelines, § 15164.)

8.07 STAGED EIR.

When a large capital project will require a number of discretionary approvals from governmental agencies and one of the approvals will occur more than two years before construction will begin, a Staged EIR may be prepared. The Staged EIR covers the entire project in a general form or manner. A Staged EIR should evaluate a proposal in light of current and contemplated plans and produce an informed estimate of the environmental consequences of an entire project. The particular aspect of the project before the City for approval shall be discussed with a greater degree of specificity.

When a Staged EIR has been prepared, a Supplemental EIR shall be prepared when a later approval is required for the project and the information available at the time of the later approval would permit consideration of additional environmental impacts, mitigation measures, or reasonable alternatives to the project.

(Reference: State CEQA Guidelines, § 15167.)

8.08 PROGRAM EIR.

A Program EIR is an EIR that may be prepared on an integrated series of actions that are related either:

(a) Geographically;
(b) As logical parts in a chain of contemplated actions;
(c) In connection with the issuance of rules, regulations, plans or other general criteria to govern the conduct of a continuing program; or
(d) As individual projects carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects that can be mitigated in similar ways.

(State CEQA Guidelines Section, 15168.)

An advantage of using a Program EIR is that it can "[a]llow the Lead Agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts." (State CEQA Guidelines section 15168(b)(4).) A Program EIR is distinct from a Project EIR, as a Project EIR is prepared for a specific project and must examine in detail site-specific considerations. Program EIRs are commonly used in conjunction with the process of tiering.

Tiering is the coverage of general matters in broader EIRs (such as on general plans or policy statements) with subsequent narrower EIRs. (State CEQA Guidelines section 15385; see also Local Guidelines Sections 8.02 and 11.73.) Tiering is proper "when it helps a public agency to focus upon the issues ripe for decision at each level of environmental review and in order to exclude duplicative analysis of environmental effects examined in previous environmental impact reports." (Pub. Res. Code, § 21093(a).) For example, the California Supreme Court has ruled that "CEQA does not mandate that a first-tier program EIR identify with certainty particular sources of water for second-tier projects that will be further analyzed before implementation during later stages of the program. Rather, identification of specific sources is required only at the second-tier stage when specific projects are considered." (*In re Bay-Delta etc*. (2008) 43 Cal. 4th 1143.)

Subsequent activities in the program must be examined in light of the Program EIR to determine whether additional environmental documents must be prepared. Additional environmental review documents must be prepared if the proposed later project may arguably cause significant adverse effects on the environment.

(Reference: State CEQA Guidelines, § 15168.)

8.09 USE OF A PROGRAM EIR WITH SUBSEQUENT EIRS AND NEGATIVE DECLARATIONS.

A Program EIR can be used to simplify the task of preparing environmental documents on later activities in the program. The Program EIR can:

(a) Provide the basis for an Initial Study to determine whether the later activity may have any significant effects;

(b) Be incorporated by reference to deal with regional influences, secondary effects, cumulative impacts, broad alternatives and other factors that apply to the program as a whole; or
(c) Focus an EIR on a later activity to permit discussion solely of new effects which had not been considered before.

If a Program EIR is prepared for a redevelopment plan, subsequent activities in the redevelopment program will be subject to review if they would have effects that were not examined in the Program EIR. Where the later activities involve site-specific operations, the City should use a written checklist or similar device to document the evaluation of the site and the proposed activity to determine whether the environmental effects of the operation were within the scope of the Program EIR. If a later activity would have effects that were not examined in the Program EIR, a new Initial Study would need to be prepared leading to an EIR, Negative Declaration, or Mitigated Negative Declaration. That later analysis may tier from the Program EIR as provided in State CEQA Guidelines section 15152.

If the City finds that no Subsequent EIR would be required, the City can approve the activity as being within the scope of the project covered by the Program EIR, and no new environmental document is required. (See Local Guidelines Section 8.04.) Whether a later activity is within the scope of a Program EIR is a factual question that the Lead Agency determines based on substantial evidence in the record. Factors that the Lead Agency may consider in making that determination include, but are not limited to, consistency of the later activity with the type of allowable land use, overall planned density and building intensity, geographic area analyzed for environmental impacts, and covered infrastructure, as described in the Program EIR.

(Reference: State CEQA Guidelines, § 15168.)

8.10 USE OF AN EIR FROM AN EARLIER PROJECT.

A single EIR may be used to describe more than one project when the projects involve substantially identical environmental impacts. Any environmental impacts peculiar to one of the projects must be separately set forth and explained.

(Reference: State CEQA Guidelines, § 15165.)

8.11 MASTER EIR.

A Master EIR is an EIR which may be prepared for:

(a) A general plan (including elements and amendments);
(b) A specific plan;
(c) A project consisting of smaller individual projects to be phased;
(d) A regulation to be implemented by subsequent projects;
(e) A project to be carried out pursuant to a development agreement;
(f) A project pursuant to or furthering a redevelopment plan;
(g) A state highway or mass transit project subject to multiple reviews or approvals; or
(h) A regional transportation plan or congestion management plan.

A Master EIR must do both of the following:

(a) Describe and present sufficient information about anticipated subsequent projects within its scope, including their size, location, intensity, and scheduling; and
(b) Preliminarily describe potential impacts of anticipated subsequent projects for which insufficient information is available to support a full impact assessment.

The City and Responsible Agencies identified in the Master EIR may use the Master EIR to limit environmental review of subsequent projects. However, the Lead Agency for the subsequent project must prepare an Initial Study to determine whether the subsequent project and its significant environmental effects were included in the Master EIR. If the Lead Agency for the subsequent project finds that the subsequent project will have no additional significant environmental effect and that no new mitigation measures or alternatives may be required, it may prepare written findings to that effect without preparing a new environmental document. When the Lead Agency makes this finding, it must provide public notice of the availability of its proposed finding for public review and comment in the same manner as if it were providing public notice of the availability of a draft EIR. (See Sections 15177(d) and 15087 of the State CEQA Guidelines and Section 7.25 of these Local Guidelines.)

A previously certified Master EIR cannot be relied upon to limit review of a subsequent project if:

(a) A project not identified in the certified Master EIR has been approved and that project may affect the adequacy of the Master EIR for the subsequent project now under consideration; or
(b) The Master EIR was certified more than five (5) years before the filing of an application for the subsequent project, unless the City reviews the adequacy of the Master EIR and:

    (1) Finds that, since the Master EIR was certified, no substantial changes have occurred that would cause the subsequent project to have significant environmental impacts, and there is no new information that the subsequent project would have significant environmental impacts; or

    (2) Prepares an Initial Study and either certifies a Subsequent or Supplemental EIR or adopts a Mitigated Negative Declaration that addresses any substantial changes or new information that would cause the subsequent project to have potentially significant environmental impacts. The certified subsequent or supplemental EIR must either be incorporated into the previously certified Master EIR or the City must identify any deletions, additions or other modifications to the previously certified Master EIR in the new document. The City may include a section in the subsequent or supplemental EIR that identifies these changes to the previously certified Master EIR.

When the Lead Agency cannot find that the subsequent project will have no additional significant environmental effect and no new mitigation measures or alternatives will be required, it must prepare either a Mitigated Negative Declaration or an EIR for the subsequent project.

(Reference: State CEQA Guidelines, § 15175.)

8.12 FOCUSED EIR.

A Focused EIR is an EIR for a subsequent project identified in a Master EIR. It may be used only if the City finds that the Master EIR's analysis of cumulative, growth-inducing, and irreversible significant environmental effects is adequate for the subsequent project. The Focused EIR must incorporate by reference the Master EIR.

The Focused EIR must analyze additional significant environmental effects not addressed in the Master EIR and any new mitigation measures or alternatives not included in the Master EIR. "Additional significant effects on the environment" means those project-specific effects on the environment that were not addressed as significant effects on the environment in the Master EIR.

The Focused EIR must also examine the following:

(a) Significant effects discussed in the Master EIR for which substantial new information exists that shows those effects may be more significant than described in the Master EIR;
(b) Those mitigation measures found to be infeasible in the Master EIR for which substantial new information exists that shows the effects may be more significant than described in the Master EIR; and
(c) Those mitigation measures found to be infeasible in the Master EIR for which substantial new information exists that shows those measures may now be feasible.

The Focused EIR need not examine the following effects:

(a) Those that were mitigated through Master EIR mitigation measures; or
(b) Those that were examined in the Master EIR in sufficient detail to allow project-specific mitigation or for which mitigation was found to be the responsibility of another agency.

A Focused EIR may be prepared for a multifamily residential project not exceeding 100 units or a mixed use residential project not exceeding 100,000 square feet even though the project was not identified in a Master EIR, if the following conditions are met:

(a) The project is consistent with a general plan, specific plan, community plan, or zoning ordinance for which an EIR was prepared within five (5) years of the Focused EIR's certification;
(b) The project does not require the preparation of a Subsequent or Supplemental EIR; and
(c) The parcel is surrounded by immediately contiguous urban development, was previously developed with urban uses, or is within one-half mile of a rail transit station.

A Focused EIR for these projects should be limited to potentially significant effects that are project-specific and/or which substantial new information shows will be more significant than described in the Master EIR. No discussion shall be required of alternatives to the project, cumulative impacts of the project, or the growth-inducing impacts of the project. (See State CEQA Guidelines section 15179.5.)

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8.13 SPECIAL REQUIREMENTS FOR REDEVELOPMENT PROJECTS.

An EIR for a redevelopment plan may be a Master EIR, Program EIR or Project EIR. An EIR for a redevelopment plan must specify whether it is a Master EIR, a Program EIR or a Project EIR. Normally, the City will not be a Lead Agency for a redevelopment plan. However, if the City is a Responsible Agency on such a project, the City should endeavor to ensure that the county and/or applicable city as the case may be, as Lead Agency, analyzes these impacts in accordance with CEQA.

If a Program EIR is prepared for a redevelopment plan, subsequent activities in the redevelopment program will be subject to review if they would have effects that were not examined in the Program EIR. The Lead Agency should use a written checklist or similar device to document the evaluation of the site and the proposed activity to determine whether the environmental effects of the operation were indeed covered in the Program EIR. If the Lead Agency finds that no new effects could occur, no new mitigation measures would be required or that State CEQA Guidelines sections 15162 and 15163 do not otherwise apply, the Lead Agency can approve the activity as being within the scope of the project covered by the Program EIR, and no new environmental document is required.

If the EIR for a redevelopment plan is a Project EIR, all public and private activities or undertakings pursuant to or in furtherance of the Redevelopment Plan shall constitute a single project, which shall be deemed approved at the time of the adoption of the Redevelopment Plan. Once certified, no subsequent EIRs will be needed unless required by State CEQA Guidelines sections 15162 or 15163. (State CEQA Guidelines section 15180.) If a Master EIR is prepared for a redevelopment plan, subsequent projects will be subject to review if they would have effects that were not examined in the Master EIR. If no new effects could occur or no new mitigation measures would be required, the Lead Agency can approve the activity as being within the scope of the project covered by the Master EIR, and no new environmental document is required.

(Reference: State CEQA Guidelines, § 15180.)

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9. AFFORDABLE HOUSING

9.01 STREAMLINED, MINISTERIAL APPROVAL PROCESS FOR AFFORDABLE HOUSING PROJECTS

The legislature has provided reforms and incentives to facilitate and expedite the approval and construction of affordable housing.

(a) An applicant may submit an application for a development that is subject to the streamlined, ministerial approval process and is not subject to a conditional use permit or any other non-legislative discretionary approval if the development satisfies all of the following objective planning standards:

(i) The development is a multifamily housing development that contains two or more residential units.

(ii) The development is located on a site that satisfies the following:

(A) A site that is a legal parcel or parcels located in a city if, and only if, the city boundaries include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel or parcels wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(B) A site in which at least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses. For the purposes of this section, parcels that are only separated by a street or highway shall be considered to be adjoined.

(C)(1) A site that meets the requirements of clause (2) and satisfies any of the following:

(I) The site is zoned for residential use or residential mixed-use development.

(II) The site has a general plan designation that allows residential use or a mix of residential and nonresidential uses.

(III) The site is zoned for office or retail commercial use and meets the requirements of Gov. Code section 65852.24.

(2) At least two-thirds of the square footage of the development designated for residential use. Additional density, floor area, and units, and any other concession, incentive, or waiver of development standards granted pursuant to the Density Bonus Law in Government Code section 65915 shall be included in the square footage calculation. The square footage of the development shall not include underground space, such as basements or underground parking garages.

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(iii) If the development contains units that are subsidized, the development proponent already has recorded, or is required by law to record, a land use restriction for the following applicable minimum durations:

(A) Fifty-five years for units that are rented.

(B) Forty-five years for units that are owned.

(iv) The development satisfies both of the following:

(A) The development is located in a locality that the department has determined is subject to this subparagraph on the basis that the number of units that have been issued building permits is less than the locality's share of the regional housing needs, by income category, for that reporting period. A locality shall remain eligible under this subparagraph until the department's determination for the next reporting period. A locality shall be subject to this subparagraph if it has not submitted an annual housing element report to the department pursuant to paragraph (2) of subdivision (a) of Section 65400 for at least two consecutive years before the development submitted an application for approval under this section.

(B) The development is subject to a requirement mandating a minimum percentage of below market rate housing based on one of the following:

(1) The locality did not submit its latest production report to the department by the time period required by Government Code section 65400, or that production report reflects that there were fewer units of above moderate-income housing approved than were required for the regional housing needs assessment cycle for that reporting period. In addition, if the project contains more than 10 units of housing, the project seeking approval dedicates a minimum of 10 percent of the total number of units, before calculating any density bonus, to housing affordable to households making below 80 percent of the area median income. If the locality has adopted a local ordinance that requires that greater than 10 percent of the units be dedicated to housing affordable to households making below 80 percent of the area median income, that zoning ordinance applies.

(2) The locality did not submit its latest production report to the department by the time period required by Government Code section 65400, or that production report reflects that there were fewer units of housing affordable to households making below 80 percent of the area median income that were issued building permits than were required for the regional housing needs assessment cycle for that reporting period, and the project seeking approval dedicates 50 percent of the total number of units, before calculating any density bonus, to housing affordable to households making below 80 percent of the area median income, unless the locality has adopted

a local ordinance that requires that greater than 50 percent of the units be dedicated to housing affordable to households making below 80 percent of the area median income, in which case that ordinance applies.

(3) The locality did not submit its latest production report to the department by the time period required by Government Code section 65400, or if the production report reflects that there were fewer units of housing affordable to any income level described in clause (i) or (ii) that were issued building permits than were required for the regional housing needs assessment cycle for that reporting period, the project seeking approval may choose between utilizing clause (i) or (ii).

(v) The development, excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Government Code section 65915, is consistent with objective zoning standards and objective design review standards in effect at the time that the development is submitted to the local government pursuant to this section. For purposes of this paragraph, "objective zoning standards" and "objective design review standards" mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. These standards may be embodied in alternative objective land use specifications adopted by a city or county, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances, subject to the following:

(A) A development shall be deemed consistent with the objective zoning standards related to housing density, as applicable, if the density proposed is compliant with the maximum density allowed within that land use designation, notwithstanding any specified maximum unit allocation that may result in fewer units of housing being permitted.

(B) In the event that objective zoning, general plan, or design review standards are mutually inconsistent, a development shall be deemed consistent with the objective zoning standards pursuant to this section if the development is consistent with the standards set forth in the general plan.

(C) A project that satisfies the requirements of Government Code section 65852.24 shall be deemed consistent with objective zoning standards, objective design standards, and objective subdivision standards if the project is consistent with the provisions of subdivision (b) of Government Code section 65852.24 and if none of the square footage in the project is designated for hotel, motel, bed and breakfast inn, or other transient lodging use, except for a residential hotel. For purposes of this subdivision, "residential hotel" shall have the same meaning as defined in Section 50519 of the Health and Safety Code.(vi) The development is not located on a site that is any of the following:

(A) A coastal zone, as defined in Division 20 (commencing with Section 30000) of the Public Resources Code.

(B) Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.

(C) Wetlands, as defined in the United States Fish and Wildlife Service Manual.

(D) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Government Code section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.

(E) A hazardous waste site that is listed pursuant to Government Code section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless either of the following apply:

(i) The site is an underground storage tank site that received a uniform closure letter issued pursuant to subdivision (g) of Section 25296.10 of the Health and Safety Code based on closure criteria established by the State Water Resources Control Board for residential use or residential mixed uses. This section does not alter or change the conditions to remove a site from the list of hazardous waste sites listed pursuant to Government Code section 65962.5; or

(ii) The State Department of Public Health, State Water Resources Control Board, Department of Toxic Substances Control, or a local agency making a determination pursuant to subdivision (c) of Section 25296.10 of the Health and Safety Code, has otherwise determined that the site is suitable for residential use or residential mixed uses.

(F) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California

Building Standards Law, Health and Safety Code section 18901, and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2 of the Government Code.

(G) Within a flood plain as determined by maps promulgated by the Federal Emergency Management Agency, unless the development has been issued a flood plain development permit pursuant to Code of Federal Regulations section 59.1.

(H) Within a floodway as determined by maps promulgated by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Code of Federal Regulations section 60.3(d)(3).

(I) Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act, Fish and Game Code section 2800, habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.

(J) Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act, Fish and Game Code section 2050, or the Native Plant Protection Act, Fish and Game Code section 1900.

(K) Lands under conservation easement.

(vii) The development is not located on a site where any of the following apply:

(A) The development would require the demolition of the following types of housing:

(1) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

(2) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(3) Housing that has been occupied by tenants within the past 10 years.

(B) The site was previously used for housing that was occupied by tenants that was demolished within 10 years before the development proponent submits an application under this section.

(C) The development would require the demolition of a historic structure that was placed on a national, state, or local historic register.

(D) The property contains housing units that are occupied by tenants, and units at the property are, or were, subsequently offered for sale to the general public by the subdivider or subsequent owner of the property.

(viii) The applicant has done both of the following, as applicable:

(A) Certified to the locality that either of the following is true, as applicable:

(1) The entirety of the development is a public work for purposes of Labor Code section 1720.

(2) If the development is not in its entirety a public work, that all construction workers employed in the execution of the development will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Labor Code sections 1773 and 1773.9, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate. If the development is subject to this subparagraph, then for those portions of the development that are not a public work all of the following shall apply:

(I) The development proponent shall ensure that the prevailing wage requirement is included in all contracts for the performance of the work.

(II) All contractors and subcontractors shall pay to all construction workers employed in the execution of the work at least the general prevailing rate of per diem wages, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.

(III) Except as provided in subsection (V), all contractors and subcontractors shall maintain and verify payroll records pursuant to Labor Code section 1776 and make those records available for inspection and copying as provided in therein.

(IV) Except as provided in subsection (V), the obligation of the contractors and subcontractors to pay prevailing wages may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to Labor Code section 1741, which may be reviewed pursuant to Labor Code section 1742, within 18 months after the completion of the development, by an underpaid worker through an administrative

complaint or civil action, or by a joint labor-management committee though a civil action under Labor Code section 1771.2. If a civil wage and penalty assessment is issued, the contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages pursuant to Labor Code section 1742.1.

(V) Subsections (III) and (IV) shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the development and provides for enforcement of that obligation through an arbitration procedure. For purposes of this clause, "project labor agreement" has the same meaning as set forth in Public Contract Code section 2500(b)(1).

(VI) Notwithstanding Labor Code section 1773.1, subdivision (c), the requirement that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing shall not apply if otherwise provided in a bona fide collective bargaining agreement covering the worker. The requirement to pay at least the general prevailing rate of per diem wages does not preclude use of an alternative workweek schedule adopted pursuant to Labor Code section 511 or 514.

(B)(1) For developments for which any of the following conditions apply, certified that a skilled and trained workforce shall be used to complete the development if the application is approved:

(I) On and after January 1, 2018, until December 31, 2021, the development consists of 75 or more units that are not 100 percent subsidized affordable housing and will be located within a jurisdiction located in a coastal or bay county with a population of 225,000 or more.

(II) On and after January 1, 2022, until December 31, 2025, the development consists of 50 or more units that are not 100 percent subsidized affordable housing and will be located within a jurisdiction located in a coastal or bay county with a population of 225,000 or more.

(III) On and after January 1, 2018, until December 31, 2019, the development consists of 75 or more units that are not 100 percent subsidized affordable housing and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.

(IV) On and after January 1, 2020, until December 31, 2021, the development consists of more than 50 units and will be located within a

jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.

(V) On and after January 1, 2022, until December 31, 2025, the development consists of more than 25 units and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal bay county.

(2) For purposes of this section, "skilled and trained workforce" has the same meaning as provided in the Public Contract Code section 2600.

(3) If the development proponent has certified that a skilled and trained workforce will be used to complete the development and the application is approved, the following shall apply:

(I) The applicant shall require in all contracts for the performance of work that every contractor and subcontractor at every tier will individually use a skilled and trained workforce to complete the development.

(II) Every contractor and subcontractor shall use a skilled and trained workforce to complete the development.

(III) Except as provided in subdivision (IV), the applicant shall provide to the locality, on a monthly basis while the development or contract is being performed, a report demonstrating compliance with Public Contract Code section 2600. A monthly report provided to the locality pursuant to this subclause shall be a public record under the California Public Records Act (Government Code section 7920.000 et seq.) and shall be open to public inspection. An applicant that fails to provide a monthly report demonstrating compliance with Public Contract Code section 2600 shall be subject to a civil penalty of ten thousand dollars ($10,000) per month for each month for which the report has not been provided. Any contractor or subcontractor that fails to use a skilled and trained workforce shall be subject to a civil penalty of two hundred dollars ($200) per day for each worker employed in contravention of the skilled and trained workforce requirement. Penalties may be assessed by the Labor Commissioner within 18 months of completion of the development using the same procedures for issuance of civil wage and penalty assessments pursuant to Labor Code section 1741, and may be reviewed pursuant to the same procedures in Labor Code section 1742. Penalties shall be paid to the State Public Works Enforcement Fund.

(IV) Subdivision (III) shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires compliance with the skilled and trained

workforce requirement and provides for enforcement of that obligation through an arbitration procedure. For purposes of this subparagraph, "project labor agreement" has the same meaning as set forth in Public Contract Code section 2500(b)(1).

(C) Notwithstanding subparagraphs (A) and (B) above, a development that is subject to approval pursuant to this section is exempt from any requirement to pay prevailing wages or use a skilled and trained workforce if it meets both of the following:

(1) The project includes 10 or fewer units.

(2) The project is not a public work for purposes of Labor Code section 1720.

(ix) The development did not or does not involve a subdivision of a parcel that is, or, notwithstanding this section, would otherwise be, subject to the Subdivision Map Act (Government Code section 66410, et seq.) or any other applicable law authorizing the subdivision of land, unless either of the following apply:

(A) The development has received or will receive financing or funding by means of a low-income housing tax credit and is subject to the requirement that prevailing wages be paid pursuant to subparagraph (A) of paragraph (viii).

(B) The development is subject to the requirement that prevailing wages be paid, and a skilled and trained workforce used, pursuant to paragraph (h).

(x) The development shall not be upon an existing parcel of land or site that is governed under the Mobilehome Residency Law, Civil Code section 798, the Recreational Vehicle Park Occupancy Law, Civil Code section 799.20, the Mobilehome Parks Act, Health and Safety Code section 18200, or the Special Occupancy Parks Act, Health and Safety Code section 18860.

(b) (i)(A)(1) Before submitting an application for a development subject to the streamlined, ministerial approval process described in this section, the development proponent shall submit to the local government a notice of its intent to submit an application. The notice of intent shall be in the form of a preliminary application that includes all of the information described in Section 65941.1 of the Government Code, as that section read on January 1, 2020.

(2) Upon receipt of a notice of intent to submit an application, the local government shall engage in a scoping consultation regarding the proposed development with any California Native American tribe that is traditionally and culturally affiliated with the geographic area, as described in Section 21080.3.1 of the Public Resources Code, of the proposed development. In order to expedite compliance with this subdivision, the local government

shall contact the Native American Heritage Commission for assistance in identifying any California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed development.

(3) The timeline for noticing and commencing a scoping consultation in accordance with this subdivision shall be as follows:

A. The local government shall provide a formal notice of a development proponent's notice of intent to submit an application to each California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed development within 30 days of receiving that notice of intent. The formal notice provided pursuant to this subclause shall include all of the following:

1. A description of the proposed development.
2. The location of the proposed development.
3. An invitation to engage in a scoping consultation in accordance with this subdivision.

B. Each California Native American tribe that receives a formal notice pursuant to this clause shall have 30 days from the receipt of that notice to accept the invitation to engage in a scoping consultation.

C. If the local government receives a response accepting an invitation to engage in a scoping consultation pursuant to this subdivision, the local government shall commence the scoping consultation within 30 days of receiving that response.

(B) The scoping consultation shall recognize that California Native American tribes traditionally and culturally affiliated with a geographic area have knowledge and expertise concerning the resources at issue and shall take into account the cultural significance of the resource to the culturally affiliated California Native American tribe.

(C) The parties to a scoping consultation conducted pursuant to this subdivision shall be the local government and any California Native American tribe traditionally and culturally affiliated with the geographic area of the proposed development. More than one California Native American tribe traditionally and culturally affiliated with the geographic area of the proposed development may participate in the scoping consultation. However, the local government, upon the request of any California Native American tribe traditionally and culturally affiliated with the geographic area of the proposed development, shall engage in a separate scoping consultation with that California Native American tribe. The development proponent and its consultants may participate in a scoping

consultation process conducted pursuant to this subdivision if all of the following conditions are met:

(1) The development proponent and its consultants agree to respect the principles set forth in this subdivision.

(2) The development proponent and its consultants engage in the scoping consultation in good faith.

(3) The California Native American tribe participating in the scoping consultation approves the participation of the development proponent and its consultants. The California Native American tribe may rescind its approval at any time during the scoping consultation, either for the duration of the scoping consultation or with respect to any particular meeting or discussion held as part of the scoping consultation.

(D) The participants to a scoping consultation pursuant to this subdivision shall comply with all of the following confidentiality requirements: (1) Government Code section 7927.000 and 7927.005; Government Code section 6254.10; Public Resources Code section 21083.3, subdivision (c); (4) State CEQA Guidelines section 15120, subdivision (d); and any additional confidentiality standards adopted by the California Native American tribe participating in the scoping consultation.

(E) CEQA does not apply to the scoping consultation conducted pursuant to this subdivision.

(b) (ii)(A) If, after concluding the scoping consultation, the parties find that no potential tribal cultural resource would be affected by the proposed development, the development proponent may submit an application for the proposed development that is subject to the streamlined, ministerial approval process described in this section

(B) If, after concluding the scoping consultation, the parties find that a potential tribal cultural resource could be affected by the proposed development and an enforceable agreement is documented between the California Native American tribe and the local government on methods, measures, and conditions for tribal cultural resource treatment, the development proponent may submit the application for a development subject to the streamlined, ministerial approval process described in this section. The local government shall ensure that the enforceable agreement is included in the requirements and conditions for the proposed development.

(C) If, after concluding the scoping consultation, the parties find that a potential tribal cultural resource could be affected by the proposed development and an enforceable agreement is not documented between the California Native American

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tribe and the local government regarding methods, measures, and conditions for tribal cultural resource treatment, the development shall not be eligible for the streamlined, ministerial approval process described in this section.

(D) For purposes of this paragraph, a scoping consultation shall be deemed to be concluded if either of the following occur:

(1) The parties to the scoping consultation document an enforceable agreement concerning methods, measures, and conditions to avoid or address potential impacts to tribal cultural resources that are or may be present.

(2) One or more parties to the scoping consultation, acting in good faith and after reasonable effort, conclude that a mutual agreement on methods, measures, and conditions to avoid or address impacts to tribal cultural resources that are or may be present cannot be reached.

(E) If the development or environmental setting substantially changes after the completion of the scoping consultation, the local government shall notify the California Native American tribe of the changes and engage in a subsequent scoping consultation if requested by the California Native American tribe.

(b) (iii) A local government may only accept an application for streamlined, ministerial approval pursuant to this section if one of the following applies:

(A) A California Native American tribe that received a formal notice of the development proponent's notice of intent to submit an application pursuant to this section did not accept the invitation to engage in a scoping consultation.

(B) The California Native American tribe accepted an invitation to engage in a scoping consultation pursuant to this section but substantially failed to engage in the scoping consultation after repeated documented attempts by the local government to engage the California Native American tribe.

(C) The parties to a scoping consultation pursuant to this subdivision find that no potential tribal cultural resource will be affected by the proposed development.

(D) A scoping consultation between a California Native American tribe and the local government has occurred and resulted in an agreement.

(b) (iv) A project shall not be eligible for the streamlined, ministerial process described in this section if any of the following apply:

(A) There is a tribal cultural resource that is on a national, state, tribal, or local historic register list located on the site of the project.

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(B) There is a potential tribal cultural resource that could be affected by the proposed development and the parties to a scoping consultation conducted pursuant to this subdivision do not document an enforceable agreement on methods, measures, and conditions for tribal cultural resource treatment, as described in this section.

(C) The parties to a scoping consultation conducted pursuant to this subdivision do not agree as to whether a potential tribal cultural resource will be affected by the proposed development.

(b) (v)(A) If, after a scoping consultation conducted pursuant to this subdivision, a project is not eligible for the streamlined, ministerial process described in this section for any or all of the following reasons, the local government shall provide written documentation of that fact, and an explanation of the reason for which the project is not eligible, to the development proponent and to any California Native American tribe that is a party to that scoping consultation:

(1) There is a tribal cultural resource that is on a national, state, tribal, or local historic register list located on the site of the project.

(2) The parties to the scoping consultation have not documented an enforceable agreement on methods, measures, and conditions for tribal cultural resource treatment.

(3) The parties to the scoping consultation do not agree as to whether a potential tribal cultural resource will be affected by the proposed development.

(b) (v)(B) The written documentation provided to a development proponent pursuant to this paragraph shall include information on how the development proponent may seek a conditional use permit or other discretionary approval of the development from the local government.

(b) (vi) This section is not intended, and shall not be construed, to limit consultation and discussion between a local government and a California Native American tribe pursuant to other applicable law, confidentiality provisions under other applicable law, the protection of religious exercise to the fullest extent permitted under state and federal law, or the ability of a California Native American tribe to submit information to the local government or participate in any process of the local government.

(b) (vii) For purposes of this subdivision:

(A) "Consultation" means the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where

feasible, seeking agreement. Consultation between local governments and Native American tribes shall be conducted in a way that is mutually respectful of each party's sovereignty. Consultation shall also recognize the tribes' potential needs for confidentiality with respect to places that have traditional tribal cultural importance. A lead agency shall consult the tribal consultation best practices described in the "State of California Tribal Consultation Guidelines: Supplement to the General Plan Guidelines" prepared by the Office of Planning and Research.

(B) "Scoping" means the act of participating in early discussions or investigations between the local government and California Native American tribe, and the development proponent if authorized by the California Native American tribe, regarding the potential effects a proposed development could have on a potential tribal cultural resource, as defined in Section 21074 of the Public Resources Code, or California Native American tribe, as defined in Section 21073 of the Public Resources Code.

(b) (viii) This subdivision (b) shall not apply to any project that has been approved under the streamlined, ministerial approval process provided under this section before September 25, 2020.

(c)(i) If a local government determines that a development submitted pursuant to this section is consistent with the objective planning standards specified in subdivision (a) and pursuant to paragraph (iii) of this subdivision, it shall approve the development. If a local government determines that a development submitted pursuant to this section is in conflict with any of the objective planning standards specified in subdivision (a), it shall provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards, as follows:

(A) Within 60 days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units.

(B) Within 90 days of submittal of the development to the local government pursuant to this section if the development contains more than 150 housing units.

(ii) If the local government fails to provide the required documentation pursuant to paragraph (1), the development shall be deemed to satisfy the objective planning standards specified in subdivision (a).

(iii) For purposes of this section, a development is consistent with the objective planning standards specified in subdivision (a) if there is substantial evidence that would allow a

reasonable person to conclude that the development is consistent with the objective planning standards. The local government shall not determine that a development, including an application for a modification under subdivision (g), is in conflict with the objective planning standards on the basis that application materials are not included, if the application contains substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards.

(d) (i) Any design review or public oversight of the development may be conducted by the local government's planning commission or any equivalent board or commission responsible for review and approval of development projects, or the city council or board of supervisors, as appropriate. That design review or public oversight shall be objective and be strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application, and shall be broadly applicable to development within the jurisdiction. That design review or public oversight shall be completed, and if the development is consistent with all objective standards, the local government shall approve the development as follows and shall not in any way inhibit, chill, or preclude the ministerial approval provided by this section or its effect, as applicable:

(A) Within 90 days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units.

(B) Within 180 days of submittal of the development to the local government pursuant to this section if the development contains more than 150 housing units.

(ii) If the development is consistent with the requirements of subparagraph (A) or (B) of paragraph (ix) of subdivision (a) and is consistent with all objective subdivision standards in the local subdivision ordinance, an application for a subdivision pursuant to the Subdivision Map Act (Division 2 (commencing with Government Code section 66410)) shall be exempt from the requirements of CEQA and shall be subject to the public oversight timelines set forth in paragraph (i).

(iii) If a local government determines that a development submitted pursuant to this section is in conflict with any of the standards imposed pursuant to paragraph (i), it shall provide the development proponent written documentation of which objective standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that objective standard or standards consistent with the timelines described in paragraph (i) of subdivision (c).

(e) (i) Notwithstanding any other law, a local government, whether or not it has adopted an ordinance governing parking requirements in multifamily developments, shall not impose parking standards for a streamlined development that was approved pursuant to this section in any of the following instances:

(A) The development is located within one-half mile of public transit.

(B) The development is located within an architecturally and historically significant historic district.

(C) When on-street parking permits are required but not offered to the occupants of the development.

(D) When there is a car share vehicle located within one block of the development.

(ii) If the development does not fall within any of the categories described in paragraph (1), the local government shall not impose parking requirements for streamlined developments approved pursuant to this section that exceed one parking space per unit.

(f) (i) If a local government approves a development pursuant to this section, then, notwithstanding any other law, that approval shall not expire if the project satisfies both of the following requirements:

(A) The project includes public investment in housing affordability, beyond tax credits.

(B) At least 50 percent of the units are affordable to households making at or below 80 percent of the area median income.

(ii) If a local government approves a development pursuant to this section, and the project does not satisfy the requirements of subparagraphs (A) and (B) of paragraph (f)(i), that approval shall remain valid for three years from the date of the final action establishing that approval, or if litigation is filed challenging that approval, from the date of the final judgment upholding that approval. Approval shall remain valid for a project provided construction activity, including demolition and grading activity, on the development site has begun pursuant to a permit issued by the local jurisdiction and is in progress. For purposes of this subdivision, "in progress" means one of the following:

(A) The construction has begun and has not ceased for more than 180 days.

(B) If the development requires multiple building permits, an initial phase has been completed, and the project proponent has applied for and is diligently pursuing a building permit for a subsequent phase, provided that once it has been issued, the building permit for the subsequent phase does not lapse.

(C) Notwithstanding subparagraph (ii), a local government may grant a project a one-time, one-year extension if the project proponent can provide documentation that there has been significant progress toward getting the development construction ready, such as filing a building permit application.

(iii) If the development proponent requests a modification pursuant to subdivision (g), then the time during which the approval shall remain valid shall be extended for the number of days between the submittal of a modification request and the date of its final approval, plus an additional 180 days to allow time to obtain a building permit. If litigation is filed relating to the modification request, the time shall be further extended during the pendency of the litigation. The extension required by this paragraph shall only apply to the first request for a modification submitted by the development proponent.

(g) (i)(A) A development proponent may request a modification to a development that has been approved under the streamlined, ministerial approval process provided in subdivision (b) if that request is submitted to the local government before the issuance of the final building permit required for construction of the development.

(i)(B) Except as provided in paragraph (g)(iiii), the local government shall approve a modification if it determines that the modification is consistent with the objective planning standards specified in subdivision (a) that were in effect when the original development application was first submitted.

(i)(C) The local government shall evaluate any modifications requested pursuant to this subdivision for consistency with the objective planning standards using the same assumptions and analytical methodology that the local government originally used to assess consistency for the development that was approved for streamlined, ministerial approval pursuant to subdivision (b).

(i)(D) A guideline that is adopted or amended by the Department of Housing and Community Development after a development is approved through the streamlined, ministerial approval process described in subdivision (b) shall not be used as a basis to deny proposed modifications.

(ii) Upon receipt of the development proponent's application requesting a modification, the local government shall determine if the requested modification is consistent with the objective planning standard and either approve or deny the modification request within 60 days after submission of the modification, or within 90 days if design review is required.

(iii) Notwithstanding paragraph (g)(i), the local government may apply objective planning standards adopted after the development application was first submitted to the requested modification in any of the following instances:

(A) The development is revised such that the total number of residential units or total square footage of construction changes by 15 percent or more. The calculation of the square footage of construction changes shall not include underground space.

(B) The development is revised such that the total number of residential units or total square footage of construction changes by 5 percent or more and it

is necessary to subject the development to an objective standard beyond those in effect when the development application was submitted in order to mitigate or avoid a specific, adverse impact as that term is defined in subparagraph (A) of paragraph (1) of subdivision (j) of Government Code section 65589.5, upon the public health or safety and there is no feasible alternative method to satisfactorily mitigate or avoid the adverse impact. The calculation of the square footage of construction changes shall not include underground space.

(C) Objective building standards contained in the California Building Standards Code (Title 24 of the California Code of Regulations), including, but not limited to, building plumbing, electrical fire, and grading codes, may be applied to all modification applications that are submitted prior to the first building permit application. Those standards may be applied to modification applications submitted after first building permit application if agreed to by the development proponent.

(iv) The local government's review of a modification request pursuant to this subdivision shall be strictly limited to determining whether the modification, including any modification to previously approved density bonus concessions or waivers, modify the development's consistency with the objective planning standards and shall not reconsider prior determinations that are not affected by the modification.

(h) (i) A local government shall not adopt or impose any requirement, including, but not limited to, increased fees or inclusionary housing requirements, that applies to a project solely or partially on the basis that the project is eligible to receive ministerial or streamlined approval pursuant to this section.

(ii) A local government shall issue a subsequent permit required for a development approved under this section if the application substantially complies with the development as it was approved pursuant to subdivision (b). Upon receipt of an application for a subsequent permit, the local government shall process the permit without unreasonable delay and shall not impose any procedure or requirement that is not imposed on projects that are not approved pursuant to this section. The local government shall consider the application for subsequent permits based upon the objective standards specified in any state or local laws that were in effect when the original development application was submitted, unless the development proponent agrees to a change in objective standards. Issuance of subsequent permits shall implement the approved development, and review of the permit application shall not inhibit, chill, or preclude the development. For purposes of this paragraph, a "subsequent permit" means a permit required subsequent to receiving approval under subdivision (b), and includes, but is not limited to, demolition, grading, and building permits and final maps, if necessary.

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(i) (i) This section shall not affect a development proponent's ability to use any alternative streamlined by right permit processing adopted by a local government, including the provisions of Government Code section 65583.2(i).

(ii) This section shall not prevent a development from also qualifying as a housing development project entitled to the protections of Government Code section 65589.5. This paragraph does not constitute a change in, but is declaratory of, existing law.

(j) CEQA does not apply to actions taken by a state agency, local government, or the San Francisco Bay Area Rapid Transit District to:

(i) Lease, convey, or encumber land owned by the local government or the San Francisco Bay Area Rapid Transit District or to facilitate the lease, conveyance, or encumbrance of land owned by the local government, or for the lease of land owned by the San Francisco Bay Area Rapid Transit District in association with an eligible TOD project, as defined pursuant to Section 29010.1 of the Public Utilities Code, nor to any decisions associated with that lease, or to provide financial assistance to a development that receives streamlined approval pursuant to this section that is to be used for housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code.

(ii) Approve improvements located on land owned by the local government or the San Francisco Bay Area Rapid Transit District that are necessary to implement a development that receives streamlined approval pursuant to this section that is to be used for housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code.

(k) For purposes of this section the following definitions shall apply:

(1) "Affordable housing cost" has the same meaning as set forth in section 50052.5 of the Health and Safety Code.

(2) (A) Subject to the qualification provided by subparagraph (B), "affordable rent" has the same meaning as set forth in Section 50063 of the Health and Safety Code.

(B) For a development for which an application pursuant to this section was submitted prior to January 1, 2019, that includes 500 units or more of housing, and that dedicates 50 percent of the total number of units, before calculating any density bonus, to housing affordable to households making at, or below, 80 percent of the area median income, affordable rent for at least 30 percent of these units shall be set at an affordable rent as defined in subparagraph (k)(1), and "affordable rent" for the remainder of these units shall mean a rent that is consistent with the maximum rent levels for a housing development that receives an allocation of state or federal low-

income housing tax credits from the California Tax Credit Allocation Committee.

(3) "Department" means the Department of Housing and Community Development.

(4) "Development proponent" means the developer who submits an application for streamlined approval pursuant to this section.

(5) "Completed entitlements" means a housing development that has received all the required land use approvals or entitlements necessary for the issuance of a building permit.

(6) "Locality" or "local government" means a city, including a charter city, a county, including a charter county, or a city and county, including a charter city and county.

(7) "Moderate income housing units" means housing units with an affordable housing cost or affordable rent for persons and families of moderate income, as that term is defined in Section 50093 of the Health and Safety Code.

(8) "Production report" means the information reported pursuant to subparagraph (D) of paragraph (2) of subdivision (a) of Government Code section 65400.

(9) "State agency" includes every state office, officer, department, division, bureau, board, and commission, but does not include the California State University or the University of California.

(10) "Subsidized" means units that are price or rent restricted such that the units are affordable to households meeting the definitions of very low and lower income, as defined in Sections 50079.5 and 50105 of the Health and Safety Code.

(11) "Reporting period" means either of the following:

(A) The first half of the regional housing needs assessment cycle.

(B) The last half of the regional housing needs assessment cycle.

(12) "Urban uses" means any current or former residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.

(l) The determination of whether an application for a development is subject to the streamlined ministerial approval process provided by subdivision (b) is not a "project" under CEQA.

(m) This section shall remain in effect until January 1, 2026.

(Reference: Gov. Code, § 65913.4.)

9.02 MINISTERIAL APPROVAL PROCESS FOR URBAN LOT SPLITS AND HOUSING DEVELOPMENTS WITH NO MORE THAN TWO RESIDENTIAL UNITS WITHIN A SINGLE-FAMILY RESIDENTIAL ZONE (SB 9)

(a) A proposed housing development containing no more than two residential units within a single-family residential zone shall be considered ministerially, without discretionary review or a hearing, and shall therefore not be subject to CEQA, if the proposed housing development meets all of the following requirements:

(1) The parcel subject to the proposed housing development is located within a city, the boundaries of which include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or for unincorporated areas, a legal parcel wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(2) The parcel is not located on a site that is any of the following:

(A) Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction;

(B) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993);

(C) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Government Code section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code—unless the parcel is a site excluded from the specified hazard zone by a local agency, or is a site that has adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development;

(D) A hazardous waste site that is listed pursuant to Government Code section 65962.5 or a hazardous waste site designated by the

Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses;

(E) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law, and by any local building department;

(F) Within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency;

(G) Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the development has received a no-rise certification;

(H) Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act, habitat conservation plan pursuant to the federal Endangered Species Act of 1973, or other adopted natural resources protection plan;

(I) Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973, the California Endangered Species Act, or the Native Plant Protection Act; or lands under conservation easement; or

(J) Lands under conservation easement.

(3) Notwithstanding any provision of this section or any local law, the proposed housing development would not require demolition or alteration of any of the following types of housing:

(A) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income;

(B) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power;

(C) Housing that has been occupied by a tenant in the last three years.

(4) The parcel subject to the proposed housing development is not a parcel on which an owner of residential real property has exercised the owner's rights to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

(5) The proposed housing development does not allow the demolition of more than 25 percent of the existing exterior structural walls, unless the housing development meets at least one of the following conditions:

(A) If a local ordinance so allows; or

(B) The site has not been occupied by a tenant in the last three years

(6) The development is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.

Other regulations governing the approval of a housing development under this section are set forth in Government Code section 65852.21(a).

(b) Notwithstanding any other provision of local law, a local agency shall ministerially approve, as set forth in this section, a parcel map for an urban lot split—and such urban lot split shall therefore not be subject to CEQA—only if the local agency determines that the parcel map for the urban lot split meets all of the following requirements:

(1) The parcel map subdivides an existing parcel to create no more than two new parcels of approximately equal lot area provided that one parcel shall not be smaller than 40 percent of the lot area of the original parcel proposed for subdivision.

(2) Both newly created parcels are no smaller than 1,200 square feet, except that a local agency may by ordinance adopt a smaller minimum lot size subject to ministerial approval.

(3) The parcel being subdivided meets all of the following requirements:

(A) The parcel is located within a single-family residential zone.

(B) The parcel subject to the proposed urban lot split is located within a city, the boundaries of which include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(C) The parcel is not located on a site enumerated in Paragraph (a)(2) above.

(D) The proposed urban lot split would not require demolition or alteration of any of the following types of housing:

(i) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

(ii) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(iii) A parcel or parcels on which an owner of residential real property has exercised the owner's rights to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

(iv) Housing that has been occupied by a tenant in the last three years.

(E) The parcel is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.

(F) The parcel has not been established through prior exercise of an urban lot split as provided for in this section.

(G) Neither the owner of the parcel being subdivided nor any person acting in concert with the owner has previously subdivided an adjacent parcel using an urban lot split as provided for in this section.

Other regulations governing the approval of an urban lot split under this section are set forth in Government Code section 65852.21(b).

9.03 APPROVAL OF ORDINANCE TO ZONE ANY PARCEL FOR UP TO 10 UNITS OF RESIDENTIAL DENSITY PER PARCEL IN CERTAIN CIRCUMSTANCES (SB 10)

(a) A local government may adopt an ordinance to zone a parcel for up to 10 units of residential density per parcel, at a height specified by the local government in the ordinance, if the parcel is located in a transit-rich area or an urban infill site. This subsection shall not apply to either of the following:

(1) Parcels located within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Government Code section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This paragraph does not apply to sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.

(2) Any local restriction enacted or approved by a local initiative that designates publicly owned land as open-space land, as defined in subdivision (h) of Section 65560, or for park or recreational purposes.

(b) An ordinance adopted in accordance with this section, and any resolution to amend the jurisdiction's General Plan, ordinance, or other local regulation adopted to be consistent with that zoning ordinance, shall not constitute a "project" under CEQA.

(c) Notwithstanding any other law that allows ministerial or by right approval of a development project or that grants an exemption from CEQA, a residential or mixed-use residential project consisting of more than 10 new residential units on one or more parcels that are zoned pursuant to an ordinance adopted under this section shall not be approved ministerially or by right and shall not be exempt from CEQA. This subdivision, however, shall not apply to a project located on a parcel or parcels that are zoned pursuant to an ordinance adopted under this section, but subsequently rezoned without regard to this section. A subsequent ordinance adopted to rezone the parcel or parcels shall not be exempt from CEQA. Any environmental review conducted to adopt the subsequent ordinance shall consider the change in the zoning applicable to the parcel or parcels before they were zoned or rezoned pursuant to the ordinance adopted under this section.

Other regulations governing the approval of an ordinance under this section are set forth in Government Code section 65913.5.

9.04 HOUSING SUSTAINABILITY DISTRICTS.

The Planning and Zoning Law requires a city or county to adopt a general plan for land use development within its boundaries. The general plan must contain seven mandatory elements, including a housing element. Existing law provides for various reforms and incentives intended to facilitate and expedite the construction of affordable housing. Senate Bill 73 authorizes a city, county, or city and county, including a charter agency, to establish by ordinance a housing sustainability district that meets specified requirements, including authorizing residential use within the district through the ministerial issuance of a permit. The agency is authorized to apply to the Department of Housing and Community Development for approval of a zoning incentive payment and requires the agency to provide specified information about the proposed housing sustainability district ordinance. The department is required to approve a zoning incentive payment if the ordinance meets the above-described requirements and the agency's housing element is in compliance with specified law.

A city, county, or city and county with a housing sustainability district would be entitled to a zoning incentive payment, subject to appropriation of funds for that purpose, and require that one-half of the amount be paid when the department approves the zone and one-half of the amount be paid when the department verifies that permits for the construction of the units have issued within the zone, provided that the city, county, or city and county has received a certificate of compliance for the applicable year. If the agency reduces the density of sites within the district from specified levels set forth in the Senate Bill 73, the agency would be required to return the full amount of zoning incentive payments it has received to the department. The bill also authorizes a developer to develop a project in a housing sustainability district in accordance with the already existing land use approval procedures that would otherwise apply to the parcel in the absence of the establishment of the housing sustainability district pursuant to its provisions, as provided.

As it relates specifically to CEQA, a Lead Agency designating a housing sustainability district is required to prepare an EIR pursuant to Government Code section 66201 to identify and mitigate, to the extent feasible, environmental impacts resulting from the designation. The EIR shall identify mitigation measures that may be undertaken by housing projects in the housing sustainability district to mitigate the environmental impacts identified in the EIR. Housing projects undertaken in the housing sustainability districts that meet specified requirements, including if the project satisfies certain design review standards applicable to development projects within the district provided the project is "complementary to adjacent buildings and structures and is consistent with the [agency's] general plan," are exempt under CEQA.

(Reference: Pub. Resources Code, § 21155.10, 21155.11.)

9.05 INTERIM MOTEL HOUSING PROJECTS.

"Interim motel housing projects" are statutorily exempt from CEQA. A project is exempt from CEQA as an "interim motel housing project" where the project consists of the conversion of a structure with a certificate of occupancy as a motel, hotel, residential hotel, or hostel to supportive or transitional housing and the conversion meets at least one of the following conditions: (1) the conversion does not result in the expansion of more than 10 percent of the floor area of any individual living unit in the structure; and (2) the conversion does not result in any significant effects relating to traffic, noise, air quality, or water quality.

If the City determines that a project is exempt from CEQA as an interim motel housing project, it must file a Notice of Exemption with the State Clearinghouse.

(Reference: Pub. Resources Code, § 21080.50 .)

9.06 SUPPORTIVE HOUSING AND "NO PLACE LIKE HOME" PROJECTS.

A decision by the City to seek funding from, or the Department of Housing and Community Development's awarding of funds pursuant to, the "No Place Like Home Program" (set forth in Part 3.9 of Division 5 of the Welfare and Institutions Code, commencing with Section 5849.1) does not constitute a "project" under CEQA.

"Supportive housing" in areas where multifamily and mixed uses are permitted may be a "use by right" and thus exempt from CEQA if the supportive housing project meets certain criteria

set forth in Government Code section 65651. A "supportive housing" project is a project that provides housing with no limit on length of stay, that is occupied by persons within the target population—i.e., persons with disabilities, families who are homeless, or homeless youth—and that is linked to onsite or offsite services that assist the supportive housing resident to retain housing, improve their health status, and maximize their ability to live and, when possible, work in the community. A policy by a city or county to approve as a use by right proposed housing developments with a limit higher than 50 units does not constitute a "project" under CEQA. To see the requirements of the exemptions relating to supportive housing, please see Government Code section 65651.

If a No Place Like Home project is not exempt from CEQA under Government Code section 65651, the development applicant may request, within 10 days after the City determines the type of environmental documentation required for the project under CEQA, that the City prepare and certify the record of proceeding for the environmental review of the No Place Like Home project in accordance with Public Resources Code section 21186.

If the City approves or determines to carry out a No Place Like Home project that is subject to CEQA, the City shall file a notice of that approval or determination in accordance with the requirements of Public Resources Code section 21151, subdivision (a), except that the Notice of Determination shall be filed within two working days after the approval or determination becomes final. Likewise, if the City approves or determines to carry out a No Place Like Home project that is not subject to CEQA, the City shall file a Notice of Exemption in accordance with the requirements of Public Resources Code section 21152, subdivision (b), except that the Notice of Exemption shall be filed within two working days after the approval or determination becomes final.

(Reference: Pub. Resources Code, § 21163, *et seq.*; Gov. Code, § 65651; Health & Safety Code, § 50675.14.)

9.07 AFFORDABLE HOUSING DEVELOPMENTS IN COMMERCIAL ZONES.

A proposed affordable multifamily housing development project is subject to streamlined, ministerial review and is not subject to CEQA if it meets the following requirements:

1. One hundred percent of the units within the development project, excluding managers' units, must be dedicated to lower income households at an affordable cost, as defined by Section 50052.5 of the Health and Safety Code, or an affordable rent set in an amount consistent with the rent limits established by the California Tax Credit Allocation Committee. The units must be subject to a recorded deed restriction for a period of 55 years for rental units and 45 years for owner-occupied units.

2. The proposed development must meet applicable objective zoning standards, objective subdivision standards, and objective design review standards as further defined in Government Code section 65912.113(f) & (g).

3. The proposed housing development must meet certain density requirements set forth in Government Code section 65583.2(c)(3).

4. The project must be located in a zone where office, retail, or parking are a principally permitted use.

5. At least 75 percent of the perimeter of the project site must adjoin parcels that are developed with urban uses. Parcels that are only separated by a street or highway shall be considered adjoined.

6. The project may not be located on a site or adjoined to any site where more than one-third of the square footage on the site is dedicated to industrial use.

7. The project site must be located on a legal parcel or parcels that are either (a) in a city where the city boundaries include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau; or (b) in an unincorporated area, and the legal parcel or parcels are wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

8. None of the proposed housing may be located within 500 feet of a freeway.

9. None of the proposed housing may be located within 3,200 feet of a facility that actively extracts or refines oil or natural gas.

10. The project may not be located on a site that qualifies as either prime farmland or farmland of statewide importance.

11. The project site may not be located in wetlands.

12. The project site may not be located in a very high fire hazard severity zone.

13. The project site may not be located on a hazardous waste site, with limited exceptions as set forth in Government Code section 65913.4(a)(6)(E).

14. The project site may not be located within a delineated earthquake fault zone, unless the development complies with applicable seismic protection building code standards as set forth in Government Code section 65913.4(a)(6)(F).

15. The project may not be located within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency ("FEMA").

16. The project site may not be located within a regulatory floodway as determined by FEMA, with limited exceptions as set forth in Government Code section 65913.4(a)(6)(H).

17. The project site may not be located on lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act, habitat conservation plan pursuant to the federal Endangered Species Act, or other adopted natural resource protection plan.

18. The project site may not be located on habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act, the California Endangered Species Act, or the Native Plant Protection Act.

19. The project site may not be located on lands under conservation easement.

20. The project site may not be located on an existing parcel of land or site that is governed under the Mobilehome Residency Law, the Recreational Vehicle Park Occupancy Law, the Mobilehome Parks Act, or the Special Occupancy Parks Act.

21. For a project proposed on a site within a neighborhood plan area, the applicable neighborhood plan must permit multifamily housing development on the site. Additional requirements apply to projects within a neighborhood plan area as of January 1, 2024, as set forth in Government Code section 65912.113(i).

22. For a project proposed on a vacant site, the project may not result in significant and unavoidable impacts to tribal cultural resources on the site.

23. The development proponent must complete a Phase I Environmental Site Assessment, and the proponent must undertake additional measures if a recognized environmental condition is found as set forth in Government Code section 65912.113(c).

A project approved under this section must meet certain labor standards, as set forth in Government Code section 65912.130, et seq. For example, a private housing development project under this section is subject to a requirement that all construction workers employed in the execution of the development be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations.

(Reference: Gov. Code, § 65912.110, et seq.)

9.08 MIXED-INCOME HOUSING DEVELOPMENTS ALONG COMMERCIAL CORRIDORS.

A proposed multifamily housing development project is subject to streamlined, ministerial review and is not subject to CEQA if it meets the following requirements:

1. The proposed development project must meet all of the following affordability criteria, as set forth in greater detail in Government Code section 65912.122:

   (a)(1) A rental housing development shall include either of the following:

   (A) Eight percent of the units for very low income households and 5 percent of the units for extremely low income households; or

   (B) Fifteen percent of the units for lower income households.

(2) The development proponent must agree to, and the local government must ensure, the continued affordability of all affordable rental units included pursuant to this section for 55 years.

(b)(1) An owner-occupied housing development shall include either of the following:

(A) Thirty percent of the units must be offered at an affordable housing cost, as defined in Section 50052.5 of the Health and Safety Code, to moderate-income households; or

(B) Fifteen percent of the units must be offered at an affordable housing cost, as defined in Section 50052.5 of the Health and Safety Code, to lower income households.

(2) The development proponent must agree to, and the local government must ensure, the continued affordability of all affordable rental units included pursuant to this section for 45 years.

(c) If the local government has a local affordable housing requirement, the housing development project shall comply with all of the following:

(1) The development project shall include the percentage of affordable units required by this section or the local requirement, whichever is higher.

(2) The development project shall meet the lowest income targeting in either policy.

(3) If the local affordable housing requirement requires greater than 15 percent of the units to be dedicated for lower income households and does not require the inclusion of units affordable to very low and extremely low income households, then the rental housing development shall do both of the following:

(A) Include 8 percent of the units for very low income households and 5 percent of the units for extremely low income households; and

(B) Fifteen percent of units affordable to lower income households shall be subtracted from the percentage of units required by the local policy at the highest required affordability level.

(d) Affordable units in the development project shall have the same bedroom and bathroom count ratio as the market rate units, be equitably distributed within the project, and have the same type or quality of appliances, fixtures, and finishes.

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2. The project site must abut a commercial corridor and have frontage along the commercial corridor of at least 50 feet.

3. The project site may not be greater than 20 acres.

4. The project must be located in a zone where office, retail, or parking are a principally permitted use.

5. At least 75 percent of the perimeter of the project site must adjoin parcels that are developed with urban uses. Parcels that are only separated by a street or highway shall be considered adjoined.

6. The project may not be located on a site or adjoined to any site where more than one-third of the square footage on the site is dedicated to industrial use.

7. The project site must be located on a legal parcel or parcels that are either (a) in a city where the city boundaries include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau; or (b) in an unincorporated area, and the legal parcel or parcels are wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

8. The proposed development must meet applicable objective zoning standards, objective subdivision standards, and objective design review standards as further explained in Government Code section 65912.123(j).

9. The proposed housing development must meet certain density requirements set forth in Government Code section 65912.123(b).

10. The proposed housing development must meet certain height and setback requirements set forth in Government Code section 65912.123(c)-(d).

11. The project may not be located on a site where any of the following would apply:

    (a) The development would require the demolition of the following types of housing: (i) housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income; (ii) housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power; (iii) or housing that has been occupied by tenants within the past 10 years, excluding any manager's units.

    (b) The site was previously used for permanent housing that was occupied by tenants, excluding any manager's units, that was demolished within 10 years before the development proponent submitted its application for the development.

(c) The site would require the demolition of a historic structure that was placed on a national, state, or local historic register.

(d) The property contains one to four dwelling units.

(e) The property is vacant and zoned for housing but not for multifamily residential use.

(f) The existing parcel of land or site is governed under the Mobilehome Residency Law, the Recreational Vehicle Park Occupancy Law, the Mobilehome Parks Act, or the Special Occupancy Parks Act

12. None of the proposed housing may be located within 500 feet of a freeway.

13. None of the proposed housing may be located within 3,200 feet of a facility that actively extracts or refines oil or natural gas.

14. The project may not be located on a site that qualifies as either prime farmland or farmland of statewide importance.

15. The project site may not be located in wetlands.

16. The project site may not be located in a very high fire hazard severity zone.

17. The project site may not be located on a hazardous waste site, with limited exceptions as set forth in Government Code section 65913.4(a)(6)(E).

18. The project site may not be located within a delineated earthquake fault zone, unless the development complies with applicable seismic protection building code standards as set forth in Government Code section 65913.4(a)(6)(F).

19. The project may not be located within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency ("FEMA").

20. The project site may not be located within a regulatory floodway as determined by FEMA, with limited exceptions as set forth in Government Code section 65913.4(a)(6)(H).

21. The project site may not be located on lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act, habitat conservation plan pursuant to the federal Endangered Species Act, or other adopted natural resource protection plan.

22. The project site may not be located on habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act, the California Endangered Species Act, or the Native Plant Protection Act.

23. The project site may not be located on lands under conservation easement.

24. For a project proposed on a site within a neighborhood plan area, the applicable neighborhood plan must permit multifamily housing development on the site. Additional requirements apply to projects within a neighborhood plan area as of January 1, 2024, as set forth in Government Code section 65912.121(i).

25. For a project proposed on a vacant site, the project may not result in significant and unavoidable impacts to tribal cultural resources on the site.

26. The development proponent must complete a Phase I Environmental Site Assessment, and the proponent must undertake additional measures if a recognized environmental condition is found as set forth in Government Code section 65912.123(f).

A project approved under this section must meet certain labor standards, as set forth in Government Code section 65912.130, et seq. For example, a private housing development project under this section is subject to a requirement that all construction workers employed in the execution of the development be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations.

(Reference: Gov. Code, § 65912.120, et seq.)

9.09 A RESPONSIBLE AGENCY'S PROVISION OF FINANCIAL ASSISTANCE OR INSURANCE FOR THE DEVELOPMENT AND CONSTRUCTION OF AFFORDABLE HOUSING.

Action taken by a local agency that is acting as a responsible agency – not as a lead agency – to provide financial assistance or insurance for the development and construction of residential housing for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, is exempt from CEQA if the project that is the subject of the application for financial assistance or insurance will be subject to CEQA review by another public agency.

(Reference: Pub. Resources Code, § 21080.10.)

9.10 EXEMPTION FOR SPECIFIED AFFORDABLE HOUSING PROJECTS.

If the conditions and requirements set forth in Public Resources code section 21080.40 are met, the following public agency action relating to an "affordable housing project" shall be exempt from CEQA :

1. The issuance of an entitlement by a public agency for an affordable housing project.

2. An action to lease, convey, or encumber land owned by a public agency for an affordable housing project.

3. An action to facilitate the lease, conveyance, or encumbrance of land owned or to be purchased by a public agency for an affordable housing project.

4. Rezoning, specific plan amendments, or general plan amendments required specifically and exclusively to allow the construction of an affordable housing project.

5. An action to provide financial assistance in furtherance of implementing an affordable housing project.

Section 21080.40 of the Public Resources Code defines "affordable housing project" as a project that meets the following requirements:

- The project consists of multifamily residential uses only or a mix of multifamily residential and nonresidential uses;

- At least two-thirds of the square footage of the project is designated for residential use;

- All of the project's residential units, excluding managers' units, are dedicated to lower income households, as defined by Health & Safety Code section 50079.5;

- The project meets the labor requirements set forth in Government Code section 65912.130, or Government Code section 65912.131 if the project has 50 or more residential units;

- The project is located on a parcel in any of the following locations: (i) an urbanized area or urban cluster, as designated by the United States Census Bureau, (ii) within one-half mile walking distance to either a high-quality transit corridor or a major transit stop, (iii) a very low vehicle travel area (defined as an urbanized area where existing residential development generates vehicle miles traveled per capita that is below 85 percent of either regional vehicle miles traveled per capita or city vehicle miles traveled per capita), or (iv) proximal to six or more certain specified amenities, including within one-half mile of a bus station or ferry terminal, or within one mile (or two miles if in a rural area) of a supermarket or grocery store, public park, community center, pharmacy or drugstore, medical clinic or hospital, public library, or a school; and

- Parcels that are developed with urban uses must adjoin at least 75 percent of the perimeter of the project site or at least three sides of a four-sided project site.

To qualify for this exemption, the affordable housing project must meet a series of requirements set forth in Public Resources Code section 21080.40. The requirements include that the affordable housing project be subject to a recorded California Tax Credit Allocation Committee regulatory agreement for at least 55 years upon completion of construction, and that the project site must be adequately served by existing utilities or extensions. In addition, the public agency must confirm that the project is not built on environmentally sensitive or hazardous land; that the project will not have significant and unavoidable tribal cultural resource impacts; that a Phase I environmental assessment was prepared and any hazardous substances on the site have been

remediated; and if the project site is not permitted for multifamily housing, that none of the housing is located within 500 feet of a freeway or within 3,200 feet of a facility that actively extracts or refines soil or natural gas; and that the project site is not within a very high fire hazard severity zone.

If a lead agency determines that the affordable housing project is exempt from CEQA pursuant to this provision, it must file a notice of exemption with the Office of Planning and Research and the county clerk of each county in which the project is located.

(Reference: Pub. Resources Code, § 21080.40.)

9.11 MINISTERIAL APPROVAL OF HOUSING DEVELOPMENTS ON LAND OWNED BY INDEPENDENT INSTITUTIONS OF HIGHER EDUCATION AND RELIGIOUS INSTITUTIONS.

A "housing development project" is not subject to CEQA if it meets the criteria and requirements set forth in Government Code section 65913.16. To qualify for the exemption, a housing development project must, among other things, meet the following requirements:

1. The housing development project must be located on land owned on or before January 1, 2024 by an independent institution of higher education or a religious institution, including ownership through an affiliated or associated nonprofit public benefit corporation organized pursuant to the Nonprofit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code).

2. The housing development project must consist of residential units only; constitute a mixed-use development consisting of residential and non-residential uses with at least two-thirds of the square footage designated for residential use; or consist of transitional housing or supportive housing.

3. The housing development project must meet certain affordability requirements. One hundred percent of the development project's total units, exclusive of a manager's unit or units, must be for lower income households, as defined by Section 50079.5 of the Health and Safety Code, except that up to 20 percent of the total units in the development may be for moderate-income households, as defined in Section 50052 of the Health and Safety Code, and 5 percent of the units may be for staff of the independent institution of higher education or religious institution that owns the land.

4. The project must be subject to specified labor and prevailing wage requirements.

The exemption is subject to a lengthy series of locational and other requirements, set forth in Government Code section 65913.16.

(Reference: Gov. Code, § 65913.16.)

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10. CEQA LITIGATION

10.01 TIMELINES.

When a CEQA lawsuit is filed, there are numerous and complex time requirements that must be met. Pressing deadlines begin to run in the days immediately after a CEQA lawsuit has been filed with the Court. For example, within ten (10) business days of the public agency being served with a petition or complaint alleging a violation of CEQA, the City, if it was the Lead Agency, must provide the petitioner with a list of Responsible Agencies and public agencies with jurisdiction by law over any natural resource affected by the project at issue. There are a variety of other deadlines that apply in CEQA litigation.

If a CEQA lawsuit is filed, CEQA counsel should be contacted immediately in order to ensure that all the applicable deadlines are met.

10.02 MEDIATION AND SETTLEMENT.

After Litigation Has Been Filed. The parties in a CEQA lawsuit are required to meet and discuss settlement. Within twenty (20) days of being served with a CEQA legal challenge, the public agency named in the lawsuit must file a notice with the court setting forth the time and place for a settlement meeting. The meeting must be scheduled and held not later than forty-five (45) days from the date of service of the petition or complaint upon the public agency. Usually the main parties to the litigation (such as the Lead Agency, the developer of the project if there is one, and those challenging the project and their respective attorneys) meet to discuss settlement; there is no requirement to hire a professional mediator. The settlement meeting is usually subject to a confidentiality agreement.

If the parties in a CEQA lawsuit are in settlement or mediation, that attempt is intended to occur concurrently with the litigation. This means that the respondent public agency will be required to comply with all existing litigation timelines and requirements (for example, preparing and lodging the administrative record discussed below) while simultaneously conducting settlement or mediation, unless the parties enter into an alternate agreement to stay the litigation and that agreement is approved by the court.

10.03 ADMINISTRATIVE RECORD.

A. Contents of Administrative Record.

When the Lead Agency's CEQA finding(s) and/or action is challenged in a lawsuit, the Lead Agency must certify the administrative record that formed the basis of the Lead Agency's decision. To the extent the documents listed below exist and are not subject to a privilege that exempts them from disclosure, the following items should be included in the administrative record:

(1) All project application materials;

(2) All staff reports and related documents prepared by the public agency with respect to its compliance with the substantive and procedural requirements of CEQA and with respect to the action on the project;

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(3) All staff reports and related documents prepared by the public agency and written testimony or documents submitted by any person relevant to any findings or statement of overriding considerations adopted by the public agency pursuant to CEQA or these Local Guidelines;

(4) Any transcript or minutes of the proceedings at which the decision-making body of the public agency heard testimony on or considered any environmental document on the project, and any transcript or minutes of proceedings before any advisory body to the respondent public agency that were presented to the decision-making body prior to action on the environmental documents or on the project;

(5) All notices issued by the public agency to comply with CEQA or with any other law governing the processing and approval of the project;

(6) All written comments received in response to, or in connection with, environmental documents prepared for the project, including responses to the notice of preparation;

(7) All written evidence or correspondence submitted to, or transferred from, the public agency with respect to compliance with CEQA or with respect to the project;

(8) Any proposed decisions or findings submitted to the decision-making body of the public agency by its staff or the project proponent, project opponents, or other persons, to the extent such documents are subject to public disclosure;

(9) The documentation of the final public agency decision, including the final environmental impact report, mitigated negative declaration, or negative declaration, and all documents, in addition to those referenced in paragraph (3) above, cited or relied on in the findings or in a statement of overriding considerations adopted pursuant to CEQA;

(10) Any other written materials relevant to the respondent public agency's compliance with CEQA or to its decision on the merits of the project, including the initial study; any drafts of any environmental document, or portions thereof, that were released for public review; copies of studies or other documents relied upon in any environmental document prepared for the project and either made available to the public during the public review period or included in the public agency's files on the project; and internal agency communications, including staff notes and memoranda, related to the project or to compliance with CEQA, to the extent such documents are subject to public disclosure. The administrative record need not include communications that are of a logistical nature, such as meeting invitations or scheduling communications. The administrative record further may not include material that is subject to a privilege contained in the Evidence Code or material that is subject to an exemption set forth in the California Public Records Act; and

(11) The full written record before any inferior administrative decision-making body whose decision was appealed prior to the filing of the lawsuit.

B. Organization of Administrative Record.

The administrative record should be organized as follows:

(1) Index. A detailed index must be included at the beginning of the administrative record listing each document in the order presented. Each entry must include the document's title, date, brief description, and the volume and page where the document begins;

(2) The Notice of Determination;

(3) The resolutions or ordinances adopted by the Lead Agency approving the project;

(4) The findings required by Public Resources Code section 21081, including any statement of overriding considerations;

(5) The Final EIR, including the Draft EIR or a revision of the draft, all other matters included in the Final EIR (such as traffic studies and air quality studies), and other types of environmental documents prepared under CEQA, such as a negative declaration, mitigated negative declaration, or addenda;

(6) The initial study;

(7) Staff reports prepared for the administrative bodies providing subordinate approvals or recommendations to the Lead Agency, in chronological order;

(8) Transcripts and minutes of hearings, in chronological order; and

(9) All other documents appropriate for inclusion in the administrative record, in chronological order.

Each section listed above must be separated by tabs or marked with electronic bookmarks. Oversized documents (such as building plans and maps) must be presented in a manner that allows them to be easily unfolded and viewed.

The court may issue an order allowing the documents to be organized in a different manner.

C. Preparation of Administrative Record.

The administrative record can be prepared: (1) by the petitioner, if the petitioner provides the Lead Agency notice that it elects to prepare the record, or (2) by the Lead Agency. If the petitioner provides notice that it elects to prepare the administrative record, the Lead Agency may, within five (5) business days of receiving such notice, deny the petitioner's request to prepare the record. In this circumstance, the Lead Agency may prepare the administrative record itself despite the petitioner's election. The petitioner and the Lead Agency can also agree on any alternative method of preparing the record, such as having the project applicant prepare the administrative record. However, when a third party such as the project applicant prepares or assists with the

preparation of the administrative record, the Lead Agency may not be able to recover fees incurred by the third party unless petitioner has agreed to this method of preparation.

Notwithstanding the above, upon the written request of a project applicant received no later than 30 days after the date that the Lead Agency makes a determination pursuant to Public Resources Code section 21080.1, 21094.5, or Chapter 4.2 (commencing with Public Resources Code section 21155) and with the written consent of the Lead Agency sent within 10 business days from receipt of the written request, the Lead Agency may prepare the administrative record concurrently with the administrative process. Should the Lead Agency and the project applicant so desire to pursue concurrent record preparation, the parties must comply with the provisions of Public Resources Code section 21167.6.2.

(See Pub. Resources Code, § 21167.6.)

D. Special Circumstances For Environmental Leadership Projects.

Special timing considerations and requirements apply if the Project is certified by the Governor as an Environmental Leadership Project pursuant to the "Jobs and Economic Improvement Through Environmental Leadership Act of 2021." For example, the administrative record must be finished and certified within five (5) days of project approval. See Public Resources Code section 21186 for a complete discussion of the special requirements related to the preparation of an administrative record for an Environmental Leadership Project.

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11. DEFINITIONS

Whenever the following terms are used in these Local Guidelines, they shall have the following meaning unless otherwise expressly defined:

11.01 "Agricultural Employee" means a person engaged in agriculture, which includes farming in all its branches, and, among other things, includes: (1) the cultivation and tillage of the soil, (2) dairying, (3) the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, (4) the raising of livestock, bees, furbearing animals, or poultry, and (5) any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market and delivery to storage or to market or to carriers for transportation to market.

This definition does not include any person covered by the National Labor Relations Act as agricultural employees pursuant to Section 2(3) of the Labor Management Relations Act (Section 152(3), Title 29, United States Code) and Section 3(f) of the Fair Labor Standards Act (Section 203(f), Title 29, United States Code). This definition does not apply to employees who perform work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work (as these terms have been construed under Section 8(e) of the Labor Management Relations Act, 29 United States Code Section 158(e)) or logging or timber-clearing operations in initial preparation of land for farming, or who does land leveling or only land surveying for any of the above. As used in this definition, "land leveling" shall include only major land moving operations changing the contour of the land, but shall not include annual or seasonal tillage or preparation of land for cultivation. (State CEQA Guidelines section 15191(a).)

11.02 "Applicant"means a person who proposes to carry out a project that requires a lease, permit, license, certificate, or other entitlement for use, or requires financial aid from one or more public agencies when applying for governmental approval or assistance.

11.03 "Approval"means a decision by the decision-making body or other authorized body or officer of the City which commits the City to a definite course of action with regard to a particular project. With regard to any project to be undertaken directly by the City, approval shall be deemed to occur on the date when the decision-making body adopts a motion or resolution determining to proceed with the project, which in no event shall be later than the date of adoption of plans and specifications. As to private projects, approval shall be deemed to have occurred upon the earliest commitment to provide service or the issuance by the City of a discretionary contract, subsidy, or other form of financial assistance, lease, permit, license, certificate, or other entitlement for use of the project. The mere acquisition of land by the City shall not, in and of itself, be deemed to constitute approval of a project.

For purposes of these Local Guidelines, all environmental documents must be completed as of the time of project approval.

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11.04 "Baseline" refers to the pre-project environmental conditions. By comparing the project's potential impacts to the baseline, the Lead Agency determines whether the project's impacts are substantial enough to be significant under the relevant thresholds of significance. Generally, the baseline is the environmental conditions existing on the date the environmental analysis begins, such as the date the Notice of Preparation is published for an EIR or the date the Notice of Intent to Adopt a Negative Declaration is published. However, in certain circumstances, an earlier or later date may provide a more accurate environmental analysis. The City may establish any baseline that is appropriate, including an earlier or later date, as long as the choice of baseline can be supported by substantial evidence.

11.05 "California Native American Tribe" means a Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of Chapter 905 of the Statutes of 2004.

11.06 "Categorical Exemption" means an exemption from CEQA for a class of projects based on a finding by the Secretary of the Resources Agency that the class of projects does not have a significant effect on the environment.

11.07 "Census-Defined Place" means a specific unincorporated land area within boundaries determined by the United States Census Bureau in the most recent decennial census.

11.08 "CEQA" means the California Environmental Quality Act, codified at California Public Resources Code sections 21000, et seq.

11.09 "City" means the City of Ontario.

11.10 "Clerk" means either the "Clerk of the Board" or the "County Clerk" depending upon the county. Please refer to the "Index to Environmental Filing by County" in the Staff Summary to determine which applies.

11.11 "Community-Level Environmental Review" means either (1) or (2) below:

(1) An EIR certified for any of the following:

(a) A general plan;
(b) A revision or update to the general plan that includes at least the land use and circulation elements;
(c) An applicable community plan;
(d) An applicable specific plan; or
(e) A housing element of the general plan, if the Environmental Impact Report analyzed the environmental effects of the density of the proposed project;

(2) A Negative Declaration or Mitigated Negative Declaration adopted as a subsequent environmental review document, following and based upon an EIR on a general plan, an applicable community plan or specific plan, provided that the subsequent environmental review document is allowed by CEQA following

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a Master EIR or a Program EIR or is required pursuant to Public Resource Section 21166.

11.12 "Consultation" means the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement. Consultation between government agencies and Native American tribes shall be conducted in a way that is mutually respectful of each party's sovereignty. Consultation shall also recognize the tribes' potential needs for confidentiality with respect to places that have traditional tribal cultural significance.

11.13 "Cumulative Impacts" means two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts. The individual effects may be changes resulting from a single project or a number of separate projects, whether past, present or future.

The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present and reasonably foreseeable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.

11.14 "Cumulatively Considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

11.15 "Decision-Making Body" means the body within the City, e.g. the City Council, which has final approval authority over the particular project.

11.16 "Developed Open Space" means land that meets each of the following three criteria:

(1) Is publicly owned, or financed in whole or in part by public funds;

(2) Is generally open to, and available for use by, the public; and

(3) Is predominantly lacking in structural development other than structures associated with open spaces, including, but not limited to, playgrounds, swimming pools, ball fields, enclosed child play areas, and picnic facilities.

Developed Open Space may include land that has been designated for acquisition by a public agency for developed open space purposes, but does not include lands acquired by public funds dedicated to the acquisition of land for housing purposes.

11.17 "Development Project" means any project undertaken for the purpose of development, including any project involving the issuance of a permit for construction or reconstruction but not a permit to operate. It does not include any ministerial projects proposed to be carried out or approved by public agencies. (Government Code section 65928.)

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11.18 "Discretionary Project" means a project for which approval requires the exercise of independent judgment, deliberation, or decision-making on the part of the City. To determine whether a project is discretionary, the key question is whether the public agency can use its subjective judgment to decide whether and how to carry out or approve a project.

11.19 "EIR" means Environmental Impact Report, a detailed written statement setting forth the environmental effects and considerations pertaining to a project. EIR may mean a Draft or a Final version of an EIR, a Project EIR, a Subsequent EIR, a Supplemental EIR, a Tiered EIR, a Staged EIR, a Program EIR, a Redevelopment EIR, a Master EIR, or a Focused EIR.

11.20 "Emergency" means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. Emergency includes such occurrences as fire, flood, earthquake, landslide or other natural disaster, as well as such occurrences as riot, war, terrorist incident, accident or sabotage.

11.21 "Endangered, Rare or Threatened Species" means certain species or subspecies of animals or plants. A species or subspecies of animal or plant is "Endangered" when its survival and reproduction in the wild are in immediate jeopardy from one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, disease, or other factors. A species or subspecies of animal or plant is "Threatened" when it is listed as a threatened species pursuant to the California Endangered Species Act or the Federal Endangered Species Act. A species or subspecies of animal or plant is "Rare" when either:

(1) Although not presently threatened with extinction, the species is existing in such small numbers throughout all or a significant portion of its range that it may become endangered if its environment worsens; or

(2) The species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range and many be considered "threatened" as that term is used in the Federal Endangered Species Act.

For purposes of analyzing impacts to biological resources, a species of animal or plant shall be presumed to be endangered, rare or threatened if it is listed under the California Endangered Species Act or the Federal Endangered Species Act.

This definition shall not include any species of the Class Insecta which is a pest whose protection under the provisions of CEQA would present an overwhelming and overriding risk to man as determined by the Director of Food and Agriculture (with regard to economic pests) or the Director of Health Services (with regard to health risks).

11.22 "Environment" means the physical conditions which exist in the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. The area involved shall

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be the area in which significant effects would occur either directly or indirectly as a result of the project. The "environment" includes both natural and man-made conditions.

11.23 "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.

11.24 "Final EIR" means an EIR containing the information contained in the Draft EIR, comments either verbatim or in summary received in the review process, a list of persons commenting, and the response of the City to the comments received.

11.25 "Greenhouse Gases"include, but are not limited to, carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

11.26 "Guidelines" or "Local Guidelines" means the City's Local Guidelines for implementing the California Environmental Quality Act.

11.27 "Highway" shall have the same meaning as defined in Section 360 of the Vehicle Code.

11.28 "Historical Resources" include:

Resources listed in, or eligible for listing in, the California Register of Historical Resources shall be considered historical resources.

A resource may be listed in the California Register if it meets any of the following National Register of Historic Places criteria:

(a) Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;
(b) Is associated with the lives of persons important in our past;
(c) Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or
(d) Has yielded, or may be likely to yield, information important in prehistory or history.

A resource may also be listed in the California Register if it is identified as significant in an historical resource survey that meets all of the following criteria:

(a) The survey has been or will be included in the State Historic Resources Inventory;
(b) The survey and the survey documentation were prepared in accordance with office procedures and requirements; and
(c) The resource is evaluated and determined by the office to have a significance rating of Category 1 to 5 on DPR Form 523.

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Resources included on a list of properties officially designated or recognized as historically significant by a local government pursuant to a local ordinance or resolution, or identified as significant in a historical resource survey (as described above) are presumed to be historically or culturally significant, unless a preponderance of evidence demonstrates that they are not historically or culturally significant.

Any of the following may be considered historically significant: any object, building, structure, site, area, place, record or manuscript which a Lead Agency determines, based upon substantial evidence in light of the whole record, to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military or cultural annals of California.

The Lead Agency is not precluded from determining that a resource is a historical resource, as defined in Public Resources Code sections 5020.1(j) or 5024.1, even if it is: (a) not listed in, or is not determined to be eligible for listing in, the California Register of Historical Resources; (b) not included in a local register of historical resources; or (c) not identified in a historical resources survey.

11.29 "Infill Site" means a site in an urbanized area that meets either of the following criteria:

(1) The site has been previously developed for qualified urban uses; or

(2) The site has not been previously developed for qualified urban uses and both (a) and (b) are met:

(a) the site is immediately adjacent to parcels that are developed with qualified urban uses, or
1. at least 75 percent of the perimeter of the site adjoins, or is separated only by an improved public right-of-way from, parcels that are developed with existing qualified urban uses at the time the Lead Agency receives an application for an approval; and
2. the remaining 25 percent of the perimeter of the site adjoins parcels that had been previously developed for qualified urban uses;

(b) No parcel within the site has been created within the past 10 years unless the parcel was created as a result of the plan of a redevelopment agency.

(Public Resources Code section 21061.3.)

11.30 "Initial Study" means a preliminary analysis conducted by the City to determine whether an EIR, a Negative Declaration, or a Mitigated Negative Declaration must be prepared or to identify the significant environmental effects to be analyzed in an EIR.

11.31 "Jurisdiction by Law" means the authority of any public agency to grant a permit or other entitlement for use, to provide funding for the project in question or to exercise authority over resources which may be affected by the project.

The City will have jurisdiction by law over a project when the City has primary and exclusive jurisdiction over the site of the project, the area in which the major environmental effects will occur, or the area in which reside those citizens most directly concerned by any such environmental effects.

11.32 "Land Disposal Facility" means a hazardous waste facility where hazardous waste is disposed in, on, or under land. (Health and Safety Code section 25199.1(d).)

11.33 "Large Treatment Facility" means a treatment facility which treats or recycles one thousand (1,000) or more tons of hazardous waste during any one month of the current reporting period commencing on or after July 1, 1991. (Health and Safety Code section 25205.1(d).)

11.34 "Lead Agency" means the public agency which has the principal responsibility for preparing environmental documents and for carrying out or approving a project when more than one public agency is involved with the same underlying activity.

11.35 "Low- and Moderate-Income Households" means persons and families of low or moderate income as defined in Section 50093 of the Health and Safety Code—i.e., persons and families whose income does not exceed 120% of area median income, adjusted for family size by the Department of Housing and Community Development, in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937. (Public Resources Code section 21159.20(d); State CEQA Guidelines section 15191(f).)

11.36 "Low-Income Households" means households of persons and families of very low and low income. Low-income persons or families are those eligible for financial assistance from governmental agencies for occupants of state-funded housing. Very low income persons are those whose incomes do not exceed the qualifying limits for very low income families as established and amended pursuant to Section 8 of the United States Housing Act of 1937. Such limits are published and updated in the California Code of Regulations. (Public Resources Code section 21159.20(c); Health and Safety Code sections 50105 and 50106; State CEQA Guidelines section 15191(g).)

11.37 "Low-Level Flight Path" means any flight path for any aircraft owned, maintained, or under the jurisdiction of the United States Department of Defense that flies lower than 1,500 feet above ground level, as indicated in the United States Department of Defense Flight Information Publication, "Area Planning Military Training Routes: North and South America (AP/1B)" published by the United States National Imagery and Mapping Agency or its successor.

11.38 "Lower Income Households" is defined in Health and Safety Code section 50079.5 to mean any of the following:

(1) "Lower income households" means persons and families whose income does not exceed the qualifying limits for lower income families as established and

amended from time to time pursuant to Section 8 of the United States Housing Act of 1937;

(2) "Very low income households" means persons and families whose incomes do not exceed the qualifying limits for very low income families as defined in Health and Safety Code 50105; or

(3) "Extremely low income households" means persons and families whose incomes do not exceed the qualifying limits for extremely low income families as defined in Health and Safety Code section 50106.

11.39 "Major Transit Stop" means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of fifteen (15) minutes or less during the morning and afternoon peak commute periods. (State CEQA Guidelines section 15191(i).)

11.40 "Metropolitan Planning Organization" or "MPO" means a federally-designated agency that provides transportation planning and programming in metropolitan areas. A MPO is designated for each urban area that has been defined in the most recent federal census as having a population of more than 50,000 people. There are 18 federally-designated MPOs in California. Non-urbanized (rural) areas do not have a designated MPO.

11.41 "Military Impact Zone" means any area, including airspace, that meets both of the following criteria:

(1) Is located within two miles of a military installation, including, but not limited to, any base, military airport, camp, post, station, yard, center, homeport facility for a ship, or any other military activity center that is under the jurisdiction of the United States Department of Defense; and

(2) Covers greater than 500 acres of unincorporated land, or greater than 100 acres of city incorporated land.

11.42 "Military Service" means the United States Department of Defense or any branch of the United States Armed Forces.

11.43 "Ministerial" describes a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out. Common examples of ministerial permits include automobile registrations, dog licenses, and marriage licenses. A building permit is ministerial if the ordinance requiring the permit limits the public official to determining whether the zoning allows the structure to be built in the requested location, the structure would meet the strength requirements in the Uniform Building Code, and the applicant has paid his fee. (Public Resources Code section 21080(b)(1).)

11.44 "Mitigated Negative Declaration" or "MND" means a Negative Declaration prepared for a Project when the Initial Study has identified potentially significant effects on the environment, but: (1) revisions in the project plans or proposals made, or agreed to, by the applicant before the proposed Negative Declaration and Initial Study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.

11.45 "Mitigation" includes avoiding the environmental impact altogether by not taking a certain action or parts of an action, minimizing impacts by limiting the degree or magnitude of the action and its implementation, rectifying the impact by repairing, rehabilitating or restoring the impacted environment, reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action, or compensating for the impact by replacing or providing substitute resources or environments, including through permanent protection of such resources in the form of conservation easements.

11.46 "Negative Declaration" or "ND" means a written statement by the City briefly describing the reasons that a proposed project, not exempt from CEQA, will not have a significant effect on the environment and, therefore, does not require the preparation of an EIR.

11.47 "Notice of Completion" means a brief report filed with the Office of Planning and Research by the City when it is the Lead Agency as soon as it has completed a Draft EIR and is prepared to send out copies for review.

11.48 "Notice of Determination" means a brief notice to be filed by the City when it approves or determines to carry out a project which is subject to the requirements of CEQA.

11.49 "Notice of Exemption" means a brief notice which may be filed by the City when it has approved or determined to carry out a project, and it has determined that the project is exempt from the requirements of CEQA. Such a notice may also be filed by an applicant where such a determination has been made by a public agency which must approve the project.

11.50 "Notice of Preparation" means a brief notice sent by a Lead Agency to notify the Responsible Agencies, Trustee Agencies, the Office of Planning and Research, and involved federal agencies that the Lead Agency plans to prepare an EIR for a project. The purpose of this notice is to solicit guidance from those agencies as to the scope and content of the environmental information to be included in the EIR. Public agencies are free to develop their own formats for this notice.

11.51 "Oak" means a native tree species in the genus Quercus, not designated as Group A or Group B commercial species pursuant to regulations adopted by the State Board of Forestry and Fire Protection pursuant to Public Resources Code section 4526, and that

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is five (5) inches or more in diameter at breast height. (Public Resources Code section 21083.4(a).)

11.52 "Oak Woodlands" means an oak stand with a greater than 10 percent canopy cover or that may have historically supported greater than 10 percent canopy cover. (Fish & Game Code section 1361(h).)

11.53 "Offsite Facility" means a facility that serves more than one generator of hazardous waste. (Public Resources Code section 21151.1(h).)

11.54 "Person" includes any person, firm, association, organization, partnership, business, trust, corporation, company, city, county, city and county, town, the state, and any of the agencies which may be political subdivisions of such entities, and, to the extent permitted by federal law, the United States, or any of its agencies or political subdivisions**.**

11.55 "Pipeline" as defined in these Local Guidelines depends on the context. Please see Local Guidelines Sections 3.10 and 3.11 for specific definitions.

11.56 "Private Project" means a project which will be carried out by a person other than a governmental agency, but which will need a discretionary approval from the City. Private projects will normally be those listed in subsections (2) and (3) of Local Guidelines Section 11.57.

11.57 "Project" means the whole of an action or activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect change in the environment, and is any of the following:

(1) A discretionary activity directly undertaken by the City including but not limited to public works construction and related activities, clearing or grading of land, or improvements to existing public structures;

(2) A discretionary activity which involves a public agency's issuance to a person of a lease, permit, license, certificate, or other entitlement for use, or which is supported, in whole or in part, through contracts, grants, subsidies, loans or other forms of assistance by the City; or

(3) A discretionary project proposed to be carried out or approved by public agencies, including but not limited to the enactment and amendment of local General Plans or elements thereof, the enactment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits and the approval of tentative subdivision maps.

The presence of any real degree of control over the manner in which a project is completed makes it a discretionary project.

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The term "project" refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term "project" does not mean each separate governmental approval.

11.58 "Project-Specific Effects" means all the direct or indirect environmental effects of a project other than cumulative effects and growth-inducing effects. (Public Resources Code section 21065.3; State CEQA Guidelines section 15191(j).)

11.59 "Public Water System" means a system for the provision of piped water to the public for human consumption that has 3,000 or more service connections. A public water system includes all of the following: (A) Any collection, treatment, storage, and distribution facility under control of the operator of the system which is used primarily in connection with the system; (B) Any collection or pretreatment storage facility not under the control of the operator that is used primarily in connection with the system; (C) Any person who treats water on behalf of one or more public water systems for the purpose of rendering it safe for human consumption. (State CEQA Guidelines section 15155.)

11.60 "Qualified Urban Use" means any residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses. (Public Resources Code section 21072; State CEQA Guidelines section 15191(k).)

11.61 "Residential" means a use consisting of either residential units only or residential units and primarily neighborhood-serving goods, services, or retail uses that do not exceed 15% of the total floor area of the project. (State CEQA Guidelines section 15191(l).) Residential, pursuant to Public Resources Code section 21159.24, shall mean a use consisting of either of the following:

(1) Residential units only.

(2) Residential units and primarily neighborhood-serving goods, services, or retail uses that do not exceed 25 percent of the total building square footage of the project.

11.62 "Responsible Agency" means a public agency which proposes to carry out or approve a project for which a Lead Agency has prepared the environmental documents. For the purposes of CEQA, the term "Responsible Agency" includes all federal, state, regional and local public agencies other than the Lead Agency which have discretionary approval power over the project.

11.63 "Riparian areas" mean those areas transitional between terrestrial and aquatic ecosystems and that are distinguished by gradients in biophysical conditions, ecological processes, and biota. A riparian area is an area through which surface and subsurface hydrology connect waterbodies with their adjacent uplands. A riparian area includes those portions of terrestrial ecosystems that significantly influence exchanges of energy and matter with aquatic ecosystems. A riparian area is adjacent to perennial, intermittent, and ephemeral streams, lakes, and estuarine-marine shorelines.

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11.64 "Roadway" means a roadway as defined pursuant to Section 530 of the Vehicle Code and the previously graded and maintained shoulder that is within a roadway right-of-way of no more than five feet from the edge of the roadway.

11.65 "Significant Effect" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the activity including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. A social or economic change related to a physical change may be considered in determining whether the physical change is significant.

11.66 "Significant Value as a Wildlife Habitat" includes wildlife habitat of national, statewide, regional, or local importance; habitat for species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531, et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code); habitat identified as candidate, fully protected, sensitive, or species of special status by local, state, or federal agencies; or habitat essential to the movement of resident or migratory wildlife.

11.67 "Special Use Airspace" means the land area underlying the airspace that is designated for training, research, development, or evaluation for a military service, as that land area is established by the United States Department of Defense Flight Information Publication, "Area Planning: Special Use Airspace: North and South America (AP/1A)" published by the United States National Imagery and Mapping Agency or its successor.

11.68 "Staff" means the General Manager or his or her designee**.**

11.69 "Standard" means a standard of general application that is all of the following:

(1) A quantitative, qualitative or performance requirement found in a statute, ordinance, resolution, rule, regulation, order, or other standard of general application;

(2) Adopted for the purpose of environmental protection;

(3) Adopted by a public agency through a public review process;

(4) Governs the same environmental effect which the change in the environment is impacting; and

(5) Governs the jurisdiction where the project is located.

The definition of "standard" includes any thresholds of significance adopted by the City which meet the requirements of this Section.

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If there is a conflict between standards, the City shall determine which standard is appropriate based upon substantial evidence in light of the whole record.

11.70 "State CEQA Guidelines" means the Guidelines for Implementation of the California Environmental Quality Act as adopted by the Secretary of the California Natural Resources Agency as they now exist or hereafter may be amended. (California Administrative Code, Title 14, Sections 15000, et seq.)

11.71 "Substantial Evidence" means reliable information on which a fair argument can be based to support an inference or conclusion, even though another conclusion could be drawn from that information. "Substantial evidence" includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. "Substantial evidence" does not include argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment.

11.72 "Sustainable Communities Strategy" is an element of a Regional Transportation Plan, which must be adopted by the Metropolitan Planning Organization for the region. (See Local Guidelines Section 11.40.) The Sustainable Communities Strategy is an integrated land use and transportation plan intended to reduce greenhouse gases. The Sustainable Communities Strategy includes various components such as: consideration of existing densities and uses within the region, identification of areas within the region that can accommodate an eight-year projection of the region's housing needs, development of projections for growth in the region, identification of existing transportation networks, and preparation of a forecast for development pattern for the region that can be integrated with transportation networks.

11.73 "Tiering" means the coverage of general matters in broader EIRs (such as on general plans or policy statements) with subsequent narrower EIRs or ultimately site-specific EIRs incorporating by reference the general discussions and concentrating solely on the issues specific to the EIR subsequently prepared. Tiering is appropriate when the sequence of EIRs is:

(a) From a general plan, policy, or Program EIR to a program, plan, or policy EIR of lesser scope or to a site-specific EIR; or

(b) From an EIR on a specific action at an early stage to a subsequent EIR or a supplement to an EIR at a later stage. Tiering in such cases is appropriate when it helps the Lead Agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.

(Public Resources Code sections 21003, 21061 and 21100.)

11.74 "Transit Priority Area" means an area within one-half mile of a major transit stop that is existing or planned, if the planned stop is scheduled to be completed within the

planning horizon included in a Transportation Improvement Program adopted pursuant to Section 450.216 or 450.322 of Title 23 of the Code of Federal Regulations.

11.75 "Transit Priority Project" means a mixed use project that is consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy for which the California Air Resources Board has accepted a Metropolitan Planning Organization's determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets. Such a project may be exempt from CEQA if a detailed laundry list of requirements is met. To qualify for the exemption, the Transit Priority Project must:

(1) contain at least 50 percent residential use based on total building square footage;

(2) if the project contains between 26 percent and 50 percent non-residential uses, the floor-to-area ratio (FAR) must be at least 0.75;

(3) have a minimum net density of 20 dwelling units per acre;

(4) be located within a half mile of a major transit stop or high-quality transit corridor included in a regional transportation plan; and

(5) meet all the requirements of Public Resources Code section 21155.1.

11.76 "Transportation Facilities" includes major local arterials and public transit within five (5) miles of the project site, and freeways, highways, and rail transit service within ten (10) miles of the project site.

11.77 "Tribal Cultural Resources" are either of the following:

(1) Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are either of the following:

(a) Included or determined to be eligible for inclusion in the California Register of Historical Resources.
(b) Included in a local register of historic resources as defined in subdivision (k) of Public Resources Code section 5020.1.

(2) A resource determined by the Lead Agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code section 5024.1. In applying the criteria set forth in subdivision (c) of Section 5024.1 for the purposes of this definition, the Lead Agency shall consider the significance of the resource to a California Native American tribe.

A cultural landscape that meets the criteria set forth above is a tribal cultural resource to the extent that the landscape is geographically defined in terms of the size and scope of the landscape.

A historic resource described in Public Resources Code section 21084.1, a unique archaeological resource as defined in subdivision (g) of Public Resources Code section 21083.2, or a "nonunique archaeological resource" as defined in subdivision (h) of Public Resources Code section 21083.2 may also be a tribal cultural resource if it conforms with the criteria of Tribal cultural resources.

11.78 "Trustee Agency" means a State agency having jurisdiction by law over natural resources affected by a project which are held in trust for the people of the State of California. Trustee Agencies may include, but are not limited to, the following:

(a) The California Department of Fish and Wildlife ("DFW") with regard to the fish and wildlife of the state, designated rare or endangered native plants, and game refuges, ecological reserves, and other areas administered by DFW;
(b) The State Lands Commission with regard to state owned "sovereign" lands such as the beds of navigable waters and state school lands;
(c) The State Department of Parks and Recreation with regard to units of the State Park System;
(d) The University of California with regard to sites within the Natural Land and Water Reserve System; and/or
(e) The State Water Resources Control Board with respect to surface waters.

11.79 "Urban Growth Boundary" means a provision of a locally adopted general plan that allows urban uses on one side of the boundary and prohibits urban uses on the other side of the boundary.

11.80 "Urbanized Area" means either of the following:

(1) An incorporated city that either by itself or in combination with two contiguous incorporated cities has a population of at least one hundred thousand (100,000) persons;

(2) An unincorporated area that meets both of the following requirements:

(a) The unincorporated area is either:
(i) completely surrounded by one or more incorporated cities, has a population of at least 100,000 persons either by itself or in combination with the surrounding incorporated city or cities, and has a population density that at least equals the population density of the surrounding city or cities; or
(ii) located within an urban growth boundary and has an existing residential population of at least five thousand (5,000) persons per square mile. An "urban growth boundary" means a

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provision of a locally adopted general plan that allows urban uses on one side of the boundary and prohibits urban uses on the other side.

(b) The board of supervisors with jurisdiction over the unincorporated area has taken all three of the following steps:

1. Prepared a draft document by which the board would find that the general plan, zoning ordinance, and related policies and programs applicable to the unincorporated area are consistent with principles that encourage compact development in a manner that promotes efficient transportation systems, economic growth, affordable housing, energy efficiency, and an appropriate balance of jobs and housing, and protects the environment, open space and agricultural areas;
2. Submitted the draft document to the Office of Planning and Research and allowed OPR thirty (30) days to submit comments on the draft finding to the board; and
3. At least thirty (30) days after submitting the draft document to OPR, the board has adopted a final finding in substantial conformity with the draft finding described in the draft document.

(Public Resources Code sections 21083, 21159.20-21159.24; State CEQA Guidelines section 15191(m).)

11.81 "Water Acquisition Plans" means any plans for acquiring additional water supplies prepared by the public water system or a city or county Lead Agency pursuant to subdivision (a) of section 10911 of the Water Code.

11.82 "Water Assessment" or "Water Supply Assessment" means the water supply assessment that must be prepared by the governing body of a public water system, or a city or county, pursuant to and in compliance with sections 10910 to 10915 of the Water Code, and that includes, without limitation, the elements of the assessment required to comply with subdivisions (d), (e), (f), and (g) of section 10910 of the Water Code.

11.83 "Water Demand Project" means any one of the following:

(A) A residential development of more than 500 dwelling units;

(B) A shopping center or business establishment employing more than 1,000 persons or having more than 500,000 square feet of floor space;

(C) A commercial office building employing more than 1,000 persons or having more than 250,000 square feet of floor space;

(D) A hotel or motel, or both, having more than 500 rooms;

(E) An industrial, manufacturing, or processing plant, or industrial park planned to house more than 1,000 persons, occupying more than 40 acres of land, or having more than 650,000 square feet of floor area;

Except, a proposed photovoltaic or wind energy generation facility approved on or after October 8, 2011, is not a Water Demand Project if the facility would demand no more than 75 acre-feet of water annually.

(F) A mixed-use project that includes one or more of the projects specified in subdivisions (A); (B), (C), (D), (E), or (G) of this section;

(G) A project that would demand an amount of water equivalent to, or greater than, the amount of water required by a 500 dwelling unit project; or

(H) For public water systems with fewer than 5,000 service connections, a project that meets the following criteria:

(1) A proposed residential, business, commercial, hotel or motel, or industrial development that would account for an increase of 10 percent or more in the number of a public water system's existing service connections; or

(2) A mixed-use project that would demand an amount of water equivalent to, or greater than, the amount of water required by residential development that would represent an increase of 10 percent or more in the number of the public water system's existing service connections.

(State CEQA Guidelines section 15155.)

11.84 "Waterway" means a bay, estuary, lake, pond, river, slough, or a perennial, intermittent, or ephemeral stream, lake, or estuarine-marine shoreline.

11.85 "Wetlands" has the same meaning as that term is construed in the regulations issued by the United States Army Corps of Engineers pursuant to the Clean Water Act. Thus, "wetlands" means areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. (Public Resources Code section 21159.21(d), incorporating Title 33, Code of Federal Regulations, Section 328.3.)

11.86 "Wildlife Habitat" means the ecological communities upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection. (Public Resources Code section 21159.21.)

11.87 "Zoning Approval" means any enactment, amendment, or appeal of a zoning ordinance; granting of a conditional use permit or variance; or any other form of land

use, subdivision, tract, or development approval required from the city or county having jurisdiction to permit the particular use of the property.

12. FORMS

See forms A – S which accompany these Guidelines.

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13. COMMON ACRONYMS

A. **********

ADEIR – Administrative Draft Environmental Impact Report
AQMD – Air Quality Management District
AQMP – Air Quality Management Plan
AR – Administrative Record
ARB – Air Resources Board

B. **********

BMP – Best Management Practices
BO – Biological Opinion

C. **********

Cal EPA – California Environmental Protection Agency
CAP – Climate Action Plan
CCAA – California Clean Air Act
CCR – California Code of Regulations (Title 14 Sections 15000 et seq. are also known as the State CEQA Guidelines.)
CE – Categorical Exclusion (NEPA)
CESA – California Endangered Species Act
CEQA – California Environmental Quality Act
CFR – Code of Federal Regulations
CMP – Congestion Management Plan
CRWQCB – California Regional Water Quality Control Board

D. **********

DEIR – Draft Environmental Impact Report
DFW – Department of Fish and Wildlife

E. **********

EA – Environmental Assessment (NEPA term)
EIR – Environmental Impact Report
EIS – Environmental Impact Statement (NEPA term)
EPA – Environmental Protection Agency
ESA – Endangered Species Act; Environmental Site Assessment

F. **********

FCAA – Federal Clean Air Act
FEIR – Final Environmental Impact Report
FOIA – Freedom of Information Act (Federal)
FONSI – Finding of No Significant Impact (NEPA term)
FWS – Fish and Wildlife Service

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G. **********

GHG – Greenhouse Gas
GW – Ground Water

H. **********

HH&E – Human Health and Environment
HRA – Health Risk Assessment
HS – Hazardous Substance

I. **********

IS – Initial Study

J. **********

K. **********

L. **********

LADD – Lifetime Average Daily Dose; Lowest Acceptable Daily Dose
LEA – Local Enforcement Agency
LESA – Land Evaluation and Site Assessment
LUFT – Leaking Underground Fuel Tank
LUST – Leaking Underground Storage Tanks. Reference Part 213 of Public Act 451 of 1994.

M. **********

MEIR – Master Environmental Impact Report
MMRP – Mitigation Monitoring and Reporting Plan
MPO – Metropolitan Planning Organization
MND – Mitigated Negative Declaration

N. **********

ND – Negative Declaration
NEPA – National Environmental Policy Act
NOA – Notice of Availability
NOC – Notice of Completion
NOD – Notice of Determination
NOE – Notice of Exemption
NOI – Notice of Intent
NOP – Notice of Preparation
NOV – Notice of Violation

O. **********

OPR – Office of Planning and Research

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P. **********

PEIR – Program Environmental Impact Report. Sometimes also used to describe a Project Environmental Impact Report
PM – Particulate Matter
PRA – Public Records Act
PSA – Permit Streamlining Act

Q. **********

R. **********

RCRA – Resource Conservation and Recovery Act (1976) Governs definition, handling, and disposal of hazardous waste.

S. **********

SCH – State Clearinghouse
SEIR – Supplemental or Subsequent Environmental Impact Report
SMARA – Surface Mining and Reclamation Act
SWMP – Stormwater Monitoring Program
SWPPP – Stormwater Pollution Prevention Program

T. **********

TCM – Transportation Control Measure
TCP – Transportation Control Plan
TDS – Total Dissolved Solids
TMP – Transportation Management Plan
Title V – refers to Title V of the Clean Air Act related to ambient air quality provisions
TLV – Threshold Limit Value

U. **********

UBC – Uniform Building Code
UFC – Uniform Fire Code
UGST – Underground Storage Tank
USDW – Underground Source of Drinking Water
UWMP – Urban Water Management Plan

V. **********

VOC – Volatile Organic Compounds (Health & Safety Code, Section 25123.6.)
VOS – Vehicle Operating Survey

W. **********

WQS – Water Quality Standard
WSA – Water Supply Assessment
WTP – Water Treatment Plant. A facility designed to provide treatment to water.
WWTP – Wastewater Treatment Plan

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X. **********

Y. **********

Z. **********

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West End Animal Services Agency	**SECTION:** **CONSENT CALENDAR**
August 22, 2024	
Prepared By: Vanny Khu, Administrative Officer	Submitted To: JPA Board
Reviewed By: Jordan Villwock, Interim Administrator	Approved: _____
Approved By: 	Continued To: _____
	Denied: _____
	Item No: 04

SUBJECT: A PROFESSIONAL SERVICES AGREEMENT WITH BEST BEST AND KRIEGER FOR LEGAL SERVICES

RECOMMENDATION: That the Board of Directors authorize the Interim Administrator to execute a one-year Legal Services Agreement with Best Best and Krieger LLP (BBK) of Riverside, California, for legal services in the amount not to exceed $180,000.

FISCAL IMPACT: The proposed Agreement is for a total not-to-exceed amount of $180,000. The term of the agreement will be from September 1, 2024 to June 30, 2025. The cost will be included in the West End Animal Services Agency Fiscal Year 2024-25 Annual Budget which will be considered at the September 2024 Regular Board of Director Meeting.

BACKGROUND & ANALYSIS: Given the complexities involved in establishing and operating a new agency, it is essential to have experienced and knowledgeable legal counsel to guide West End Animal Services Agency (WEASA) through this process. BBK has a longstanding relationship with the City of Ontario and has demonstrated expertise in municipal law, contracts, and public agency operations. BBK's familiarity with the City of Ontario's legal framework and experience with Joint Powers of Authorities (JPA) will ensure a seamless transition and reduce the learning curve associated with a new legal firm. Their extensive experience with municipal and JPA law will be invaluable in navigating the legal requirements and challenges of establishing and operating WEASA. Additionally, the existing relationship between the City of Ontario and BBK will facilitate prompt and efficient legal services, allowing WEASA to focus on its primary mission of providing high-quality animal services.

Staff recommends that the Board of Directors approve an Agreement with BBK utilizing the sole source provision. This recommendation is based on BBK's ability to consistently deliver high-quality legal work and practical solutions for critical services. The sole source provision ensures continuity in legal representation, minimizes the risks associated with transitioning to a new vendor, and leverages BBK's established rapport and deep familiarity with the City's needs. This approach maintains the high standards of legal service and enhances operational efficiency to ensure successful outcomes in the Agency's legal affairs. By continuing with BBK for WEASA matters, the Agency is best positioned to address its complex legal matters effectively and without disruption.

AGREEMENT FOR GENERAL COUNSEL LEGAL SERVICES
BETWEEN
WEST END ANIMAL SERVICES AGENCY
AND
BEST BEST & KRIEGER LLP

1. PARTIES AND DATE

This Agreement is made and entered into as of the 22nd day of August, 2024, by and between the West End Animal Services Agency, a Joint Powers Agency ("Client") and Best Best & Krieger LLP, a limited liability partnership engaged in the practice of law ("BB&K").

2. RECITALS

2.1 Client wishes to engage the services of BB&K as its General Counsel to perform all necessary legal services for the Client on the terms set forth below.

3. TERMS.

3.1 Term. The term of this Agreement shall commence on August 22, 2024 and shall continue in full force and effect until terminated in accordance with Section 3.12.

3.2 Scope of Services. BB&K shall serve as General Counsel and shall perform legal services ("Services") as may be required from time to time by the Client as set forth by this Agreement, unless otherwise agreed to by the Client and BB&K. As part of the Services to be performed hereunder, BB&K shall be responsible for the following:

3.2.1 Preparation for, and attendance at, regular meetings of the Client;

3.2.2 Provision of legal counsel at such other meetings as directed by the Client;

3.2.3 Preparation or review of Client ordinances and resolutions, together with such staff reports, orders, agreements, forms, notices, declarations, certificates, deeds, leases and other documents as requested by the Client;

3.2.4 Rendering to the officers and employees of the Client legal advice and opinions on all legal matters affecting the Client, including new legislation and court decisions, as directed by the Client;

3.2.5 Researching and interpreting laws, court decisions and other legal authorities in order to prepare legal opinions and to advise the Client on legal matters pertaining to Client operations, as directed by the Client;

3.2.6 Performing legal work pertaining to property acquisition, property disposal, public improvements, public rights-of-way and easements, as directed by the Client;

3.2.7 Responding to inquiries and review for legal sufficiency ordinances, resolutions, contracts, and administrative and personnel matters, as directed by the Client;

3.2.8 Representing and assisting on litigation matters, as directed by the Client. Such services shall include, but shall not be limited to, the preparation for and making of appearances, including preparing pleadings and petitions, making oral presentations, and preparing answers, briefs or other documents on behalf of the Client, and any officer or employee of the Client, in all federal and state courts of this State, and alternative dispute resolution officer, and before any governmental board or commission, including reviewing, defending or assisting any insurer of the Client or its agents or attorneys with respect to any lawsuit filed against the Client or any officer or employee thereof, for money or damages.

ADDITIONAL SERVICES FOR AN ADDITIONAL FEE

3.3 Designated General Counsel. Nicholaus Norvell shall be designated as General Counsel, and shall be responsible for the performance of all Services under this Agreement, including the supervision of Services performed by other members of BB&K. No change in this assignment shall be made without the consent of the Client.

3.4 Time of Performance. The Services of BB&K shall be performed expeditiously in the time frames and as directed by the Client.

3.5 Assistance. The Client agrees to provide all information and documents necessary for the attorneys at BB&K to perform their obligations under this Agreement.

3.6 Independent Contractor. BB&K shall perform all legal services required under this Agreement as an independent contractor of the Client and shall remain, at all times as to the Client, a wholly independent contractor with only such obligations as are required under this Agreement. Neither the Client, nor any of its employees, shall have any control over the manner, mode or means by which BB&K, its agents or employees, render the legal services required under this Agreement, except as otherwise set forth. The Client shall have no voice in the selection, discharge, supervision or control of BB&K's employees, representatives or agents, or in fixing their number, compensation, or hours of service.

3.7 Fees and Costs. BB&K shall render and bill for legal services in the following categories and at rates set forth in Exhibit "A" and in accordance with the BB&K Billing Policies set forth in Exhibit "B", both of which are attached hereto and incorporated herein by reference. In addition, the Client shall reimburse BB&K for reasonable and necessary expenses incurred by it in the performance of the Services under this Agreement. Authorized reimbursable expenses shall include, but are not limited to, printing and copying expenses, mileage expenses at the rate allowed by the Internal Revenue Service, toll road expenses, long distance telephone and facsimile tolls, computerized research time (e.g. Lexis or Westlaw), research services performed by BB&K's library staff, extraordinary mail or delivery costs (e.g. courier, overnight and express delivery), court fees and similar costs relating to the Services that are generally chargeable to a client. However, no separate charge shall be made by BB&K for secretarial or word processing services.

3.8 Billing. BB&K shall submit monthly to the Client a detailed statement of account for Services. The Client shall review BB&K's monthly statements and pay BB&K for Services rendered and costs incurred, as provided for in this Agreement, on a monthly basis.

3.9 Annual Reviews. The Client and BB&K agree that a review of performance and the compensation amounts referenced in this Agreement should occur at least annually.

3.10 Insurance. BB&K carries errors and omissions insurance with Lloyd's of London. After a standard deductible, this insurance provides coverage beyond what is required by the State of California. A declaration page containing information about BB&K's errors and omissions insurance policy is available upon Client's request.

3.11 Attorney-Client Privilege. Confidential communication between the Client and BB&K shall be covered by the attorney-client privilege. As used in this article, "confidential communication" means information transmitted between the Client and BB&K in the course of the relationship covered by this Agreement and in confidence by a means that, so far as the Client is aware, discloses the information to no third persons other than those who are present to further the interests of the Client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which BB&K is consulted, and includes any legal opinion formed and advice given by BB&K in the course of this relationship.

3.12 Termination of Agreement and Legal Services. This Agreement and the Services rendered under it may be terminated at any time upon thirty (30) days' prior written notice from either party, with or without cause. In the event of such termination, BB&K shall be paid for all Services authorized by the Client and performed up through and including the effective date of termination. BB&K shall also be reimbursed for all costs associated with transitioning any files or other data or documents to a new law firm or returning them to the Client.

3.13 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements.

3.14 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County.

3.15 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both parties.

3.16 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give the other party any contractual rights by custom, estoppel, or otherwise.

3.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.18 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.19 Delivery of Notices. All notices permitted or required under this Agreement notices shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Client: West End Animal Services Agency
c/o City of Ontario
303 E B Street
Ontario, CA 91764
Attn: Jordan Villwock, Interim Administrator

BB&K: Best Best & Krieger LLP
P.O. Box 1028
Riverside, CA 92502
Attn: Nicholaus Norvell, Partner

3.20 Indemnification.

(A) BB&K agrees to indemnify Client its officers, employees and agents against, and will hold and save each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising from the negligent acts or omissions of BB&K hereunder, or arising from BB&K's negligent performance of any term, provision, covenant or condition of this Agreement, except to the extent such claims or liabilities arise from the negligence or willful misconduct of Client, its officers, agents or employees.

(B) Client acknowledges BB&K is being appointed as General Counsel. Accordingly, the Client is responsible pursuant to Government Code Section 825 for providing a defense for the General Counsel for actions within the scope of its engagement hereunder. Therefore, Client agrees to undertake its statutory duty and indemnify BB&K, its officers, employees and agents against and will hold and save each of them harmless from, any and all claims or liabilities that may be asserted or claims by any person, firm or entity arising out of or in connection with the work, operations or activities of BB&K within the course and scope of its performance hereunder, but nothing herein shall require Client to indemnify BB&K for liability arising from its own negligence or alleged negligence. In connection herewith:

(i) Client will promptly provide a defense and pay any judgment rendered against the Client, its officers, agency or employees for any such claims or liabilities arising out of or in connection with such work, operations or activities of Client hereunder; and

(ii) In the event BB&K, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Client for such damages or other claims solely arising out of or in connection with the work operation or activities of Client hereunder, Client agrees to pay to BB&K, its officers, agents or employees any and all costs and expenses incurred by attorney, its officers, agents or employees in such action or proceeding, including, but not limited to, legal costs and attorneys' fees.

3.21 Conflicts of Interest. BB&K has an extensive municipal and public law practice on a regional basis. BB&K represents a variety of public agencies in the region, some of whom may interact with the Client from time to time. BB&K will not represent the Client and one of BB&K's other public agency clients interacting with the Client unless both the Client and the other client have consented to such dual representation.

IN WITNESS WHEREOF, the Client and BB&K have executed this Agreement for General Counsel Legal Services as of the date first written above.

(signatures contained on following page)

SIGNATURE PAGE TO
AGREEMENT FOR GENERAL COUNSEL LEGAL SERVICES
BETWEEN
WEST END ANIMAL SERVICES AGENCY
AND
BEST BEST & KRIEGER LLP

WEST END ANIMAL SERVICES AGENCY:

By: _____
Name: Jordan Villwock
Title: Interim Administrator

ATTEST:

By: _____
Title: Agency Secretary

BEST BEST & KRIEGER LLP:

By: _____
Name: Nicholaus Norvell
Title: Partner

EXHIBIT A

TO
AGREEMENT FOR GENERAL COUNSEL LEGAL SERVICES
BETWEEN
WEST END ANIMAL SERVICES AGENCY
AND
BEST BEST & KRIEGER LLP

BILLING ARRANGEMENTS

1. Basic Legal Services - Description. Basic legal services shall include all services provided to Client that are not otherwise specifically identified below as other types of specialized legal services.

2. Basic Hourly Rates. The Client shall pay for Basic Legal Services at the following rates:

Attorneys	$330
Paralegals, Law Clerks, Analysts & Admin Assistants	$185

3. Special Legal Services - Description. Special Legal Services shall include the following types of services:

A. Litigation and formal administrative or other adjudicatory hearing matters

B. Non-routine labor relations and employment matters, including employee benefits

C. Non-routine real estate matters (e.g. CC&R's, deed or title work)

D. Land acquisition and disposal matters (including pre-condemnation)

E. Taxes, fees and charges matters (e.g. Prop. 26 & Mitigation Fee Act)

F. Public construction disputes

G. Non-routine contract negotiation matters (including non-BB&K model agreements)

H. Environmental matters (e.g. CEQA, NEPA, endangered species)

I. Tax and ERISA related matters

J. Toxic substances matters (e.g. CERCLA, RCRA)

K. Complex public utility matters (e.g. electric, natural gas, telecommunications, water, rail or transit that involve state or federal regulatory issues)

L. Renewable energy and energy efficiency project contracts and power purchase agreements

M. Intergovernmental Relations and Advocacy efforts (e.g. legislative and regulatory representation) at the federal and state level

N. Public Records Act policy drafting including reviewing, assessing, and updating records-related policies to reflect current legal standards and best practices

O. Other matters mutually agreed upon between BBK and the Executive Director/Interim Administrator.

4. Special Legal Services – Rates. The Client shall pay for Special Legal Services at the following hourly rates:

Partners & Of Counsel	$430
Associates	$335
Pension Consultants	$275
Paralegals, Law Clerks, Analysts, Admin. Assistants	$195

5. Agreement Regarding Rate Categories. If BB&K believes that a matter falls within the Special Legal Services, BB&K shall seek approval from the Executive Director/Interim Administrator or his/her designee. The Executive Director/Interim Administrator's or his or her designee's approval of such a request from BB&K shall not be unreasonably withheld.

6. Other Billing Personnel. If, as, and when BB&K employs additional or different billing personnel, this Agreement may be supplemented by written administrative memoranda, providing for the categories and billing rates for such personnel, which memoranda may be approved by the Executive Director/Interim Administrator.

7. Annual Adjustments. The above rates will be adjusted annually using the cost of living index. At the start of the fiscal year, July 1, 2025 and every July 1 thereafter, rates shall be increased for the change in the cost of living for the most recently published twelve (12) month period, as shown by the U.S. Department of Labor in its All Urban Consumers Index set for the Riverside-San Bernardino-Ontario, CA area (bi-monthly) provided, however, that such adjustment shall never be lower than zero percent (0%), with advanced written notice. In addition to the automatic rate increases, either BB&K or the Client may initiate consideration of a rate increase at any time.

EXHIBIT B

TO
AGREEMENT FOR GENERAL COUNSELLEGAL SERVICES
BETWEEN
WEST END ANIMAL SERVICES AGENCY
AND
BEST BEST & KRIEGER LLP

BB&K BILLING POLICIES

Our century of experience has shown that the attorney-client relationship works best when there is mutual understanding about fees, expenses, billing and payment terms. Therefore, this statement is intended to explain our billing policies and procedures. Clients are encouraged to discuss with us any questions they have about these policies and procedures. Clients may direct specific questions about a bill to the attorney with whom the client works or to our Accounts Receivable Department (accounts.receivable@bbklaw.com). Any specific billing arrangements different from those set forth below will be confirmed in a separate written agreement between the client and the firm.

Invoice and Payment Options

Best Best & Krieger strives to meet our clients' needs in terms of providing a wide variety of invoice types, delivery and payment options. Please indicate those needs including the preferred method of invoice delivery (Invoice via Email; or USPS). In addition, accounts.receivable@bbklaw.com can provide a W-9 upon request and discuss various accepted payment methods.

Fees For Electronically Stored Information ("ESI") Support and Storage

BBK provides Electronically Stored Information ("ESI") services for matters requiring ESI support, which are matters with a document population over 1 GB – typically litigation or threatened litigation matters. BBK provides services for basic ESI processing and storage at the following rates per month based on the number of gigabytes of data ("GB") processed and stored:

1GB -250GB: $10 per GB
251GB - 550GB: $8 per GB
551GB - 750GB: $6 per GB
751GB - 1TB: $4 per GB

The amount BBK charges for basic processing and storage of ESI allows BBK to recover the costs of providing such services, plus a net profit for BBK. BBK believes that the rates it charges for processing and storage are lower than comparable services available from third party vendors in the market. If you wish to contract separately with a third party vendor for processing and storage costs, please notify PracticeSupportServices@bbklaw.com in writing. BBK also provides advanced ESI processing services at hourly rates for personnel in its Litigation Support Group. A copy of BBK's current rates for such services will be provided upon request.

Fees for Professional Services

Unless a flat fee is set forth in our engagement letter with a client, our fees for the legal work we will undertake will be based in substantial part on time spent by personnel in our office on that client's behalf. In special circumstances which will be discussed with the client and agreed upon in writing, fees will be based upon the novelty or difficulty of the matter, or the time or other special limitations imposed by the client.

Hourly rates are set to reflect the skill and experience of the attorney or other legal personnel rendering services on the client's behalf. All legal services are billed in one-tenth of an hour (0.10/hour) or six-minute increments. Our attorneys are currently billed at rates from $235 to $895 per hour, and our administrative assistants, research assistants, municipal analysts, litigation analysts, paralegals, paraprofessionals and law clerks are billed at rates from $175 to $300 per hour for new work. These rates reflect the ranges in both our public and our private rates. These hourly rates are reviewed annually to accommodate rising firm costs and to reflect changes in attorney status as lawyers attain new levels of legal experience. Any increases resulting from such reviews will be instituted automatically and will apply to each affected client, after advance notice.

Non-Attorney Personnel: BBK may employ the services of non-attorney personnel under the supervision of a BBK attorney in order to perform services called for in the legal services agreement. The most common non-attorney personnel utilized are paralegals. Other types of non-attorney personnel include, but are not limited to, case clerks, litigation analysts, and specialty consultants. The client agrees that BBK may use such non-attorney personnel to perform its services when it is reasonably necessary in the judgment of the responsible BBK attorney. Hourly fees for non-attorney personnel will be charged at the rate then in effect for such personnel. A copy of BBK's current rates and titles for non-attorney personnel will be provided upon request.

Fees For Other Services, Costs and Expenses

We attempt to serve all our clients with the most effective support systems available. Therefore, in addition to fees for professional legal services, we also charge separately for some other services and expenses to the extent of their use by individual clients. These charges include but are not limited to, mileage at the current IRS approved rate per mile, extraordinary telephone and document delivery charges, copying charges, computerized research, court filing fees and other court-related expenditures including court reporter and transcription fees. No separate charge is made for secretarial or word processing services; those costs are included within the above hourly rates.

We may need to advance costs and incur expenses on your behalf on an ongoing basis. These items are separate and apart from attorneys' fees and, as they are out-of-pocket charges, we need to have sufficient funds on hand from you to pay them when due. We will advise the client from time to time when we expect items of significant cost to be incurred, and it is required that the client send us advances to cover those costs before they are due.

Advance Deposit Toward Fees And Costs

Because new client matters involve both a substantial undertaking by our firm and the establishment of client credit with our accounting office, we require an advance payment from

clients. The amount of this advance deposit is determined on a case-by-case basis discussed first with the client, and is specified in our engagement letter.

Upon receipt, the advance deposit will be deposited into the firm's client trust account. Our monthly billings will reflect such applications of the advance deposit to costs and not to attorney's fees (unless otherwise noted in our accompanying engagement letter). At the end of engagement, we will apply any remaining balance first to costs and then to fees. We also reserve the right to require increases or renewals of these advanced deposits.

By signing the initial engagement letter, each client is agreeing that trust account balances may be withdrawn and applied to costs as they are incurred and to our billings, when we issue our invoice to the client. If we succeed in resolving your matter before the amounts deposited are used, any balance will be promptly refunded.

Monthly Invoices and Payment

Best Best & Krieger LLP provides our clients with monthly invoices for legal services performed and expenses incurred. Invoices are due and payable upon receipt.

Each monthly invoice reflects both professional and other fees for services rendered through the end of the prior month, as well as expenses incurred on the client's behalf that have been processed by the end of the prior month. Processing of some expenses is delayed until the next month and billed thereafter.

Our fees are not contingent upon any aspect of the matter and are due upon receipt. All billings are due and payable within ten days of presentation unless the full amount is covered by the balance of an advance held in our trust account.

It is our policy to treat every question about a bill promptly and fairly. It is also our policy that if a client does not pay an invoice within 60 days of mailing, we assume the client is, for whatever reason, refusing to pay. We reserve the right to terminate our engagement and withdraw as attorney of record whenever our invoices are not paid. If an invoice is 60 days late, however, we may advise the client by letter that the client must pay the invoice within 14 days or the firm will take appropriate steps to withdraw as attorney of record. If the delay is caused by a problem in the invoice, we must rely upon the client to raise that with us during the 14-day period. This same policy applies to fee arrangements which require the client to replenish fee deposits or make deposits for anticipated costs.

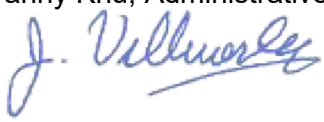
From time to time clients have questions about the format of the bill or description of work performed. If you have any such questions, please ask them when you receive the bill so we may address them on a current basis.

Changes in Fee Arrangements and Budgets

It may be necessary under certain circumstances for a client to increase the size of required advances for fees after the commencement of our engagement and depending upon the scope of the work. For example, prior to a protracted trial or hearing, the firm may require a further advance payment to the firm's trust account sufficient to cover expected fees. Any such changes in fee arrangements will be discussed with the client and mutually agreed in writing.

Because of the uncertainties involved, any estimates of anticipated fees that we provide at the request of a client for budgeting purposes, or otherwise, can only be an approximation of potential fees.

BEST BEST & KRIEGER LLP

West End Animal Services Agency	**SECTION:** **ADMINISTRATIVE** **REPORTS/DISCUSSION/ACTION**
August 22, 2024 Prepared By: David Sweeney Reviewed By: Vanny Khu, Administrative Officer Approved By: 	Submitted To: JPA Board Approved: _____ Continued To: _____ Denied: _____ Item No: 05

SUBJECT: ESTABLISH WEST END ANIMAL SERVICES AGENCY REGULAR BOARD OF DIRECTORS MEETING CADENCE AND ADOPT RESOLUTION DESIGNATING PRINCIPAL GOVERNANCE AND BUSINESS ADDRESS, HOLIDAYS, AND REGULAR MEETING SCHEDULE

RECOMMENDATION: That the Board of Directors adopt a meeting cadence for the West End Animal Services Agency (WEASA) and adopt a resolution establishing initial governance items and the regular meeting schedule.

FISCAL IMPACT: There is no fiscal impact associated with this item.

BACKGROUND & ANALYSIS: The WEASA will be managed by the Board of Directors, to ensure effective governance and facilitate regular communication and decision-making, it is essential to establish a consistent meeting schedule. This meeting cadence will enable all involved parties to participate in ongoing discussions and actions related to the agency.

Staff recommends the following options for the meeting schedule:

- First Tuesday of every month at 10:00 AM
- Second Monday of every month at 10:00 AM
- Second Thursday of every month at 10:00 AM
- Third Tuesday of every month at 10:00 AM
- Third Thursday of every month at 10:00 AM
- Fourth Thursday of every month at 10:00 AM

Alternatively, the Board of Directors could also elect to meet on a quarterly basis. If the business need arises between meetings, the WEASA Board of Directors could hold special meetings when necessary.

By adopting one of the proposed schedules, the Board of Directors will ensure that there is a regular and predictable time for discussing and addressing matters concerning the WEASA. This will foster collaboration and ensure timely decision-making to support the Agency's operations and goals.

The proposed resolution outlines the established principal office location, regular meeting schedule, and observed holidays for WEASA, as required by the Ralph M. Brown Act (Government Code § 54950 et seq.). This governance structure is designed to provide clear oversight and direction for the Agency's activities.

Adopting the resolution to designate the principal governance is a critical step in establishing effective oversight and management for the newly formed Agency. The structure will ensure that WEASA can deliver high-quality animal services and control.

RESOLUTION NO. _____

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE WEST END ANIMAL SERVICES AGENCY DESIGNATING PRINCIPAL GOVERNANCE AND BUSINESS ADDRESS, HOLIDAYS, AND REGULAR MEETING SCHEDULE

WHEREAS, the West End Animal Services Agency ("Agency") is a joint powers agency established pursuant to the Joint Exercise of Powers Act (Gov. Code § 6500 *et seq.*) and a Joint Exercise of Powers Agreement effective August 1, 2024; and

WHEREAS, the Ralph M. Brown Act, Government Code Section 54950, et seq., provides that the legislative body of each local agency shall provide, by ordinance, resolution, bylaws, or other rule, the time and place for holding its regular meetings; and

WHEREAS, the Board now desires, through the adoption of this Resolution, to establish the principal office of the Agency and the regular meeting schedule of the Board.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of the West End Animal Services Agency:

1. Recitals. That the above recitals are true and correct.

2. Principal Office. The principal office of the Agency is located at 303 E B St, Ontario, CA 91764. The Board of Directors may change this principal office from time to time as determined necessary and convenient for the conduct of Agency business.

3. Regular Meetings. Regular meetings of the Board of Directors shall be held monthly on the _____ _____ of each month at _____ a.m./p.m. in the Council Chambers of the City of Ontario located at 303 E B St, Ontario, CA 91764.

4. Holidays. The observed Holidays shall be New Years Day, Martin Luther King Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Christmas Eve, Christmas Day, and New Years Eve Day.

5. Special and Adjourned Meetings. Special and adjourned meetings of the Board of Directors may be called and held in the manner authorized in the Ralph M. Brown Act, Government Code Section 54950, et seq., as may be amended from time to time. Unless otherwise specified in the notice of a special or adjourned meeting, all such meetings shall be held in the same location as regular meetings.

6. Distribution to Board Members and Parties to the JPA Agreement. The Secretary of the Board is hereby directed to provide a copy of this

Resolution to the members of the Board and the parties to the JPA Agreement.

7. Severability. That if any provision of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Resolution which can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Board of Directors hereby declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion thereof.

8. Effective Date. That this Resolution shall take effect immediately upon its adoption.

The Secretary of the West End Animal Services Agency shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 22nd day of August 2024

_____
_____, CHAIR

ATTEST:

_____
CLAUDIA Y. ISBELL, SECRETARY

APPROVED AS TO FORM:

_____
NICHOLAUS NORVELL
GENERAL COUNSEL

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, _____, Secretary of the West End Animal Services Agency, DO HEREBY CERTIFY that foregoing Resolution No. 2024-__ was duly passed and adopted by the Board of Directors of the West End Animal Services Agency at its meeting held August 22, 2024 by the following roll call vote, to wit:

AYES: CHAIR/DIRECTORS:

NOES: DIRECTORS:

ABSENT: DIRECTORS:

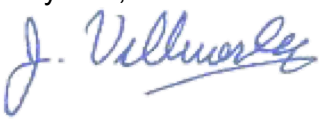
_____
CLAUDIA Y. ISBELL, SECRETARY

(SEAL)

The foregoing is the original of Resolution No. 2024-__ duly passed and adopted by the Board of Directors of the West End Animal Services Agency at its meeting held August 22, 2024.

_____
CLAUDIA Y. ISBELL SECRETARY

(SEAL)

West End Animal Services Agency	**SECTION:** **CONSENT CALENDAR**
August 22, 2024	
Prepared By: Jordan Villwock, Interim Administrator	Submitted To: JPA Board
Reviewed By: Vanny Khu, Administrative Officer	Approved: _____
Approved By: 	Continued To: _____
	Denied: _____
	Item No: 06

SUBJECT: APPOINTMENT OF INTERIM ADMINISTRATOR, TREASURER/AUDIT-CONTROLLER, AND SECRETARY

RECOMMENDATION: That the Board of Directors adopt the Resolution Appointing Agency Officers.

FISCAL IMPACT: There is no fiscal impact associated with this action.

BACKGROUND & ANALYSIS: The Joint Exercise of Powers Agreement allows for the Board of Directors to identify one or more member agency to serve as Interim Administrator, and the Interim Administrator will, among other things, identify key staff that will provide services to the Board and the Agency.

Staff is recommending adopting the resolution which will do the following:

- Appoints the City of Ontario to serve as Interim Administrator
- Recognizes Darlene Sanchez, Assistant City Manager for the City of Ontario, as the main point of contact for the City's performance as Interim Administrator
- Appoints Jordan Villwock, Management Services Director for the City of Ontario, as the Interim Administrator
- Appoints Claudia Y. Isbell, Assistant City Clerk/Records Management Director for the City of Ontario, as the Secretary
- Appoints Armen Harkalyan, Executive Director of Finance for the City of Ontario, as the Treasurer/Auditor-Controller.

RESOLUTION NO._____

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE WEST END ANIMAL SERVICES AGENCY APPOINTING AGENCY OFFICERS

WHEREAS, the West End Animal Services Agency ("Agency") is a joint powers agency established pursuant to the Joint Exercise of Powers Act (Gov. Code § 6500 *et seq.*) and a Joint Exercise of Powers Agreement effective August 1, 2024; and

WHEREAS, pursuant to the Joint Exercise of Powers Agreement, the Board may identify one or more of the member agencies to serve as Interim Administrator, and the Interim Administrator will, among other things, identify key staff that will provide services to the Board and the Agency, and

WHEREAS, pursuant to the Joint Exercise of Powers Agreement, the Board shall appoint a Secretary and Treasurer/Auditor-Controller.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of the West End Animal Services Agency:

1. That the above recitals are true and correct.

2. That the Board hereby appoints the City of Ontario to serve as Interim Administrator pursuant to the Joint Exercise of Powers Agreement.

3. That Assistant City Manager Darlene Sanchez is recognized as the main point of contact for the Agency regarding the City's performance as Interim Administrator.

4. That the City has designated Management Services Director Jordan Villwock to oversee the services provided by the City as Interim Administrator and who is authorized to exercise the powers of the Agency delegated to the City as Interim Administrator or which are typically exercised by the Executive Director of Animal Services.

5. That the Board hereby appoints Assistant City Clerk/Records Management Director Claudia Y. Isbell, MMC to serve as Secretary, who will serve until the earlier of: (a) the end of their employment by the City of Ontario; (b) their resignation as Secretary; or (c) until removed or replaced as Secretary by the Board.

6. That the Board hereby appoints the Executive Director of Finance Armen Harkalyan to serve as Treasurer/Auditor-Controller, who will serve until the earlier of: (a) the end of their employment by the City of Ontario; (b) their resignation as Treasurer/Auditor-Controller; or (c) until removed or replaced as Treasurer/Auditor-Controller by the Board.

7. That if any provision of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Resolution which can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Board of Directors hereby declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion thereof.

8. That this Resolution shall take effect immediately.

The Secretary of the West End Animal Services Agency shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 22nd day of August, 2024.

_____
_____, CHAIR

ATTEST:

_____
CLAUDIA Y. ISBELL, SECRETARY

APPROVED AS TO FORM:

_____
NICHOLAUS NORVELL
GENERAL COUNSEL

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, _____, Secretary of the West End Animal Services Agency, DO HEREBY CERTIFY that foregoing Resolution No. 2024-__ was duly passed and adopted by the Board of Directors of the West End Animal Services Agency at its meeting held August 22, 2024, by the following roll call vote, to wit:

AYES: CHAIR/DIRECTORS:

NOES: DIRECTORS:

ABSENT: DIRECTORS:

_____
CLAUDIA Y. ISBELL, SECRETARY

(SEAL)

The foregoing is the original of Resolution No. 2024-__ duly passed and adopted by the Board of Directors of the West End Animal Services Agency at its meeting held August 22, 2024

_____
CLAUDIA Y. ISBELL, SECRETARY

(SEAL)

West End Animal Services Agency	**SECTION:** **ADMINISTRATIVE REPORTS/DISCUSSION/ACTION**
August 22, 2024	
Prepared By: Vanny Khu, Administrative Officer	Submitted To: JPA Board
Reviewed By: Jordan Villwock, Interim Administrator	Approved: _____
Approved By: J. Villwock	Continued To: _____
	Denied: _____
	Item No: 07

SUBJECT: A LEASE AGREEMENT BETWEEN ASHWILL ASSOCIATES AND THE WEST END ANIMAL SERVICES AGENCY

RECOMMENDATION: That the Board of Directors authorize the Interim Administrator to negotiate and execute a Lease Agreement between Thomas M. Hendrickson Revocable Trust and the West End Animal Services Agency for the use of the property located at 1630 Shearwater Street, Ontario, Ca., for a thirty-six-month term with the option to extend for up to two additional one-year terms in a form substantially consistent with the attached leased terms.

FISCAL IMPACT: The lease rate for the property is proposed at $19,000 per month gross for months 1 – 12. The lease rate for the property is proposed at $19,570 per month gross for months 13 – 24. The lease rate for the property is proposed at $20,157 per month gross for months 25 – 36. The base rent for October 2024, November 2024, and June 2025 shall be abated. At the Agency's discretion, up to two additional one-year extensions may be executed. The base rent for the renewal lease rate will be calculated on a 3% increase of the last month's rental amount. The cost will be included in the West End Animal Services Agency Fiscal Year 2024-25 Annual Budget which will be considered at the September 2024 Regular Board of Director Meeting.

BACKGROUND & ANALYSIS: On July 16, 2024, the City of Ontario City Council voted to establish the Joint Powers Authority (JPA) partnership with the City of Chino, named the West End Animal Services Agency (WEASA). WEASA will be a full-service animal services agency that will provide both animal control and sheltering services to member agencies, with operations starting on July 1, 2025.

To accommodate the displaced animals from IVHS, WEASA must establish a temporary animal shelter by June 30, 2025. Staff began with a list of 20 available properties and identified 5 locations as potential temporary shelters. The property located at 1630 Shearwater Street, a 14,783 square feet concrete building, was deemed the most suitable location. It was also the only property that accepted the proposed use for a temporary animal shelter.

Collectively, WEASA expects to handle approximately 4,000 annual intakes of cats and dogs, averaging about 10 per day. The shelter will accommodate about 80 dogs, 50 cats, and various other small critters at any given time. The temporary shelter at 1630 Shearwater Street will feature approximately 80 temporary dog kennels, 50 temporary cat kennels, and a large cat room. The facility will also include administrative offices, veterinary technician areas, adoption rooms, and workstations for animal control officers.

As WEASA prepares to commence operations on July 1, 2025, these proactive measures will ensure a smooth transition and continued high-quality care for the animals in our community. This temporary solution is a critical step as the Agency work towards building a brand new, permanent site for WEASA in the future.

BROKERAGE SERVICES

Ashwill Associates
COMMERCIAL REAL ESTATE

21680 Gateway Center Dr, #310
Diamond Bar, CA 91765
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Sean Casey
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August 12, 2024

Mr. Greg Ashwill
Ashwill Associates
21680 Gateway Center Dr., #310
Diamond Bar, CA 91765

RE: Proposal to Lease – 1630 Shearwater Street, Ontario, CA 91761

Dear Greg,

We are pleased to present the following proposal to lease for your review and consideration:

Lessee:	West End Animal Services Agency, a joint powers authority.
Proposed Use and Mitigants:	General administrative operations for animal shelter services to the cities of Ontario and Chino. Lessee to take all necessary steps and precautions to ensure that the animal waste is property disposed of will not damage the building or concrete slab/foundation etc.
Property Description:	An approximately 14,783 square foot concrete building.
Lease Term:	Thirty-six (36) months, commencing September 1, 2024.
Early Occupancy:	Lessee shall be granted early occupancy upon lease execution, payment of monies due, and submittal of insurance certificate.
Base Rent:	$19,000.00 per month gross; months 1 – 12. $19,570.00 per month gross; months 13 – 24. $20,157.00 per month gross; months 25 – 36.
Rental Abatement:	The Base Rent for the month of October 2024, November 2024, and June 2025 shall be abated.
Utilities:	Lessee is responsible for any and all utilities servicing the subject building to include but not be limited to rubbish disposal, electricity, phone/internet, water, alarm monitoring, natural gas, and landscaping as per the AIR Single Tenant Lease-Gross attached hereto as an example only.
Option to Extend:	Lessee shall be given two (2), one (1) year options to renew the lease. The base rent for the renewal lease rate shall be calculated on a three percent (3.0%) increase of the last month's rental amount.

	In order to exercise said option to extend, Lessee must give written notice to Lessor at least three (3) months, but not more than six (6) months prior to the date that the option period would commence.
Security Deposit:	Upon lease execution, Lessee shall pay $19,000.00 for the first month's Base Rent, and a Security Deposit in an amount equal to $20,157.00. Payment shall be in the form of a cashier's check or wire transfer for a total of $39,157.00.
Financial Review:	Please provide financial statements of the member agencies – City of Ontario and City of Chino via their Annual Comprehensive Financial Report.
Delivery Conditions and Surrender:	As of the Commencement Date, the Lessor shall deliver the Premises with all Building systems (electrical, water, plumbing, HVAC, loading doors, mechanical items, roof, etc.) in good working order and condition. Upon the expiration of the Lease Term, the Lessee shall surrender the Premises in similar condition as it was delivered by the Lessor upon the Lease Commencement, ordinary wear and tear accepted.
Tenant Improvements:	Lessee shall obtain Lessor's prior written consent for all tenant improvement. Lessee, at Lessee's sole cost and expense shall remove their tenant improvements upon vacating said building and restore any damage to the building occasioned by such removal, ordinary wear and tear accepted. Lessee to provide a preliminary drawing of the proposed Tenant Improvements and modifications to the building, prior to lease execution.
Signage:	Lessee shall provide Lessor the right to approve the design of any building signage, which approval shall not be unreasonably withheld conditioned or delayed. All signage must comply with local building association rules and city municipal guidelines.
Brokerage:	It is agreed and accepted that Ashwill Associates represents the Lessee and the Lessor as a Dual Agent in this transaction. Lessor and Lessee agree to complete any State of California required Agency Relationship Disclosures.
Zoning & Restrictive Covenants:	It is Lessee's sole responsibility to verify all zoning requirements for its intended office and production use.
Disclosure:	Lessor will deliver the building with all building systems, without limitations, the HVAC units, space heaters in working condition as per the AIR Single Tenant Lease-Gross attached hereto as an example only. The subject building does not have fire sprinklers and Lessor will not install them at his cost or expense.

There are two (2) separate power panels servicing the building and both of them will need to be energized to run all of the office lights, HVAC and warehouse etc. Once the power panels are energized, Lessor will have the HVAC technician turn on and test the two (2) new HVAC units servicing the office area.

The upstairs mezzanine deck is for access purposes only. No storage of any kind shall be allowed in this area.

Non-Binding: Lessor and Lessee acknowledge that this is not a contract but only an expression of intent. Only a fully executed and delivered Lease Agreement by and between Lessor and Lessee will constitute a legally binding document. Either Party may withdraw from or terminate negotiations, at any time, for any reason or no reason at all.

No representation is made by broker as to the legal sufficiency, legal effect, or tax consequences of this expression of intent, which shall be governed by the laws of the State of California. This proposal is intended to be a non-binding statement of the terms of a proposed transaction and to reflect the parties' interest in pursuing further discussions concerning the property. It is subject to the preparation and agreement by the parties and their respective counsel of documents reflecting the terms and conditions set forth herein. It is understood and agreed that no agreements shall bind either party until a full and final written lease agreement is prepared, reviewed and approved by the parties' respective counsel, if any, and fully and mutually executed by the parties hereto. The proposal herein shall expire on August 16, 2024.

Sincerely,

Sean Casey

Ashwill Associates
#01887121

Reviewed and Approved:

_____ _____

Lessee Date

_____ _____

Lessor Date